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Supreme Court, U.S.
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No. 08-294
(consolidated with No. 08-289)

In the
Supreme Court of the United States

SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES and PRESIDENT OF THE ARIZONA SENATE,

PETITIONERS,

v.

MIRIAM FLORES, individually and as parent of Miriam Flores, minor child; ROSA RZESLAWSKI, individually and as parent of Mario Rzeslawski, minor child; STATE OF ARIZONA and the ARIZONA STATE BOARD OF EDUCATION, and its members in their official capacities,

RESPONDENTS.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

RICK RICHMOND
CHRISTOPHER C. CHIOU
STEVEN A. HASKINS
KYLE T. CUTTS
KIRKLAND & ELLIS LLP
777 South Figueroa Street
Los Angeles, CA 90017
(213) 680-8400

DAVID J. CANTELME
D. AARON BROWN
PAUL R. NEIL
CANTELME & BROWN, PLC
3030 N. Central Avenue
Phoenix, AZ 85012
(602) 200-0104

KENNETH W. STARR
Counsel of Record
KIRKLAND & ELLIS LLP
777 South Figueroa Street
Los Angeles, CA 90017
(213) 680-8400

ASHLEY C. PARRISH
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5000

Counsel for Petitioners

February 23, 2009

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Appendix A

Timothy M. Hogan, (0045S7)
David S. Baron (005574)
ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST
202 E. McDowell Rd., Ste 153
Phoenix, Arizona 85004
(602) 258-8850

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MIRIAM FLORES, individually and and as a parent of Miriam Flores, minor child, and ROSA RZESLAWSKI, individually and as a parent of Mario Rzeslawski, minor child, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE STATE OF ARIZONA; C. DIANE BISHOP, Superintendent of Public Instruction, DR.	No. CIV 92-596 TUC-ACM SECOND AMENDED COMPLAINT (For Declaratory and Injunctive Relief)

Appendix A

EUGENE HUGHES, DAVID SILVA,
CLAUDINE BATES ARTHUR, DR.
JOHN HOSNER, KEN BENNETT,
DR. RAY KELLIS, JIM ALLMAN,
and DR. MORRISON WARREN,
members of the STATE BOARD OF EDUCATION,

Defendants.

For their Second Amended Complaint in the above-entitled action, Plaintiffs hereby allege that:

I.
PRELIMINARY STATEMENT

1. This is a class action for declaratory and injunctive relief. Plaintiffs allege that all Defendants have violated 20 U.S.C. §1703(f) in their oversight, administration and funding of federally mandated instruction for limited English proficient ("LEP") students enrolled in the Arizona public school system. Plaintiffs further allege that all Defendants, other than the State, have violated the regulations (34 C.F.R. Part 100) implementing Title VI of the 1964 Civil Rights Act (42 U.S.C. §2000d), not only in the foregoing respects, but in their supervision of and support for basic instruction of minority students substantially concentrated in

comparatively poor school districts, such as Nogales Unified, thereby denying those Hispanic, Black and Native American children equal educational benefits and opportunities.

II.
JURISDICTION

2. To the extent the instant action arises under a federal statute (20 U.S.C. §1703(f)) and regulations (34 C.F.R. Part 100) securing the civil rights of racial or ethnic minorities and is therefore maintainable against all Defendants, except the State, pursuant to 42 U.S.C. §1983, 28 U.S.C. §1343 grants this court jurisdiction over the subject matter.

3. Subject matter jurisdiction, extending to all claims against all Defendants, is otherwise conferred on the court by 28 U.S.C. §1331(a), since the action presents controlling questions of federal law and seeks final declaratory as well as equitable relief.

4. Pursuant to 42 U.S.C. §2000d-7, the Defendant State of Arizona is not entitled to assert immunity from suit under the Eleventh Amendment to the United States Constitution where, as here, equitable remedies are sought for State violations of such statutes as 20 U.S.C. §1703(f).

III.
PLAINTIFFS

5. Plaintiff Miriam Flores is the mother of a daughter also named Miriam Flores. The daughter Miriam attends Coronado Elementary School, a

school maintained and operated by Nogales Unified School district No. 1. ("NUSD").

6. Plaintiff Rosa Rzeslawski is the mother of Mario Rzeslawski. Mario attends Nogales High School, a school maintained and operated by NUSD.

IV.
DEFENDANTS

7. The Defendant State of Arizona is one of the fifty states of the United States of America.

8. Plaintiffs sue the State solely for violations of 20 U.S.C. §1703(f) alleged in Count One of this Complaint.

9. The remaining Defendants are the members of the State Board of Education and the Superintendent of Public Instruction (hereafter, "the Defendant officials").

10. Plaintiffs sue the defendant officials, in their capacities as such, for the violations of 20 U.S.C. §1703(f) and 34 C.F.R. Part 100 set forth in Count One and for the violations of 34 C.F.R. Part 100 separately pled in Count Two. The aforesaid regulations are applicable to the subject matter because the State's program of public instruction annually receives and spends millions of dollars in federal financial assistance.

V.
CLASS ACTION

11. Plaintiffs Miriam Flores and Rosa Rzeslawski bring this action on behalf of themselves;

their children, Miriam Flores and Mario Rzeslawski respectively; and all Hispanic, Native American and Black children now or hereafter enrolled in NUSD, as well as the parents and guardians of those students.

12. According to official records maintained by the Arizona Department of Education ("ADOE"), the current, fulltime enrollment of minority students, as aforesaid, exceeds several thousand in NUSD.

13. The contemporary membership of the class is therefore sufficiently numerous to render joinder impracticable, as required by Fed. Rules of Civ. Pro., Rule 23(a)(1).

14. Questions of law and fact common to the classes exist, as shown by the allegations of paragraphs 19-52, which are incorporated herein for the purpose of this averment and Rule 23(a)(2).

15. The claims of the named Plaintiffs are typical of those urged on behalf of the putative classes: the minor Plaintiffs remain fulltime students in the Nogales school district and, therefore, subject to the systemic practices at issue similarly harming the educational interests of all other minority enrollees, as set forth in paragraphs 19-52. Plaintiffs also incorporate those allegations for purposes of this averment and Rule 23(a)(3).

16. Plaintiffs will fairly and adequately represent the interests of absent class members:

(a) The named, adult representatives are parents of minority children, with a continuing, vital interest in the education provided their offspring by NUSD.

(b) The proposed class representatives have no interests antagonistic to those of absentees, on whose behalf they seek the same relief that they request individually, pursuant to the same remedial theories.

(c) Plaintiffs are represented by counsel versed in the subject matter of the instant action and otherwise competent to prosecute it on behalf of the proposed classes.

17. As set forth in paragraphs 19-52, the state and the individual Defendants have acted and failed to act on grounds generally applicable to both classes, thereby making declaratory and final injunctive relief appropriate with respect to the membership as a whole.

18. This Court may, therefore, certify the proposed classes pursuant to Rule 23(a) and (b)(2).

VI.
COUNT ONE

Violations of Federal Law Requiring Maintenance of Educationally Sound, Sufficiently Supported and Properly Conducted Programs for Limited English Proficient Children

A. Respects in which all Defendants have Failed to Comply with Federal Law, in Providing for Instructional Programs Required by Limited English Proficient Students throughout the State's Public School System

19. The State has adopted legislation (A.R.S. §15-751 et. seq.) generally prescribing a program of

instruction for LEP students that if adequately implemented, would satisfy, the educational mandates of 20 U.S.C. §1703(f) and 34 C.F.R. Part 100.

20. The State has failed to provide financial and other resources necessary for adequate implementation of mandatory LEP programs by public school districts in Arizona:

(a) The cost of LEP instruction complying with federally prescribed state mandates far exceeds the only financial assistance the State theoretically provides school districts for such purposes.

(b) The State's population of LEP students is concentrated in districts, such as NUSD, that otherwise confront exceptional demands on resources of all kinds, due to the prevalence of low-income minority students peculiarly at risk of not acquiring State-prescribed essential skills, not satisfactorily completing State-mandated academic courses and not graduating from high school.

(c) Those school districts therefore are unable to underwrite LEP programs complying with federally prescribed State mandates; meet State requirements determining satisfactory Instruction of all mainstream students; and also discharge responsibilities for pupils in Special Education programs required by federal and state law.

(d) Defendants have allowed a number of districts, including NUSD, to forego or substantially neglect identification, testing, placement, instruction, assessment and reclassification of LEP students as federal law requires.

(e) Defendants' aforementioned omissions in part are deliberate and otherwise arise from a pronounced shortage of ADOE staff capable of monitoring and enforcing compliance by districts with legal mandates binding on LEP programs throughout the State.

(f) Defendants have permitted unendorsed or otherwise unqualified faculty to conduct bilingual and ESL classes enrolling thousands of LEP students, who do not receive instruction satisfying federal prescriptions on the design, curricular content and objectives, and instructional methodology of acceptable LEP programs.

(g) Defendants have allowed districts to maintain LEP programs that also lack texts and other resources necessary to impart content-area knowledge to limited English proficient children, in derogation of the State's minimum curricular requirements governing matriculation of all students not in certain Special Education programs.

(h) Defendants have permitted districts to reclassify LEP students as proficient in comprehending, speaking, reading and writing English, even though they demonstrably lack English reading skills commensurate with their ages and grade levels, and therefore cannot acquire State-prescribed essential skills in academic subjects subsequently taught them in English-only classes, unaccompanied by any endeavor sufficient to rectify either English literacy or essential skills deficits.

B. Nogales Unified School District

Appendix A

21. Miriam Flores and Mario Rzeslawski are limited English proficient Hispanic students who have matriculated through several, different grade levels in NUSD schools.

22. In May of 1993, the Office of Civil Rights, U.S. Department of Education ("OCR") issued a letter of findings in its recent investigation of alleged noncompliance by NUSD with the Civil Rights Act of 1994, 42 U.S.C., § 2000d, and its implementing regulations, 34 C.F.R. Part 100.

23. OCR then concluded that NUSD has systematically violated 34 C.F.R. Part 100, by consistently failing to identify and test LEP students in the fourth through twelfth grades, failing to provide them any programs of instruction complying with federal mandates; engaging in a pattern and practice of placing such children solely in English-only classes; failing to recruit faculty qualified to teach bilingual and/or ESL classes; and failing to take similar action required by federal law.

24. Defendants' agents were aware of the longstanding, systemic violations of 34 C.F.R. Part 100, set forth in the May, 1993 OCR letter, but never attempted to adequately enforce and were not directed by defendants to so enforce state laws and regulations prohibiting the same acts and omissions, in furtherance of federal mandates on instruction for LEP students.

25. Through very recent identification and testing, NUSD staff have determined that over two-thirds of the entire district enrollment of approximately 6700 students are limited English proficient and require placement in programs

satisfying federal, as well as complementary state, standards.

26. Due to protracted neglect of those students' basic instructional needs, LEP programs sufficient to rectify a pervasive lack of English literacy and other State-prescribed essential skills require properly trained professionals, reduced class sizes, specialized curricular materials and additional resources far beyond the means of NUSD, which spends less per student than practically any district in the state notwithstanding representative rates for local taxation.

27. LEP programs in NUSD will remain out of compliance with federal law and regulations, absent assistance from defendants that has never been forthcoming, despite their ultimate, legal responsibility for provision of instruction and related educational services satisfying the mandates of 20 U.S.C. §1703(f) and 34 C.F.R. Part 100.

C. Claim for Relief

28. Defendants systematically have failed or refused to provide fiscal as well as other resources sufficient to enable NUSD and similarly situated districts to establish and maintain programs serving LEP students in conformity with the mandates of 20 U.S.C. §1703(f) and 34 C.F.R. Part 100.

29. Defendants otherwise have allowed and effectively encouraged such districts to persevere in a pattern and practice of violating the substantive requirements of those federal laws.

30. Plaintiffs' minor children are among the LEP students subjected to the aforementioned, unlawful acts and omissions, which operate throughout their district and others like it to deny those pupils the rights, educational benefits and educational opportunities guaranteed them by 20 U.S.C. §1703(f) and 34 C.F.R. Part 100.

31. Plaintiffs and the proposed classes are entitled to injunctive relief from the continuing violations of federal law, by all defendants, set out in Count One.

VII.
DENIAL OF EQUAL EDUCATION BENEFITS AND OPPORTUNITIES. IN THE FORM OF STATE-PRESCRIBED ESSENTIAL SKILLS, TO AT-RISK MINORITY STUDENTS

A. Respects in which the Defeat Officials are Accountable for the Aforementioned Violations of 34 C.F.R, part 100

32. The defendant officials have issued regulations and directives setting forth the essential skills in reading, mathematics and writing that all mainstream students in the Arizona public schools are expected to master, before matriculating from the eighth grade and graduating from high school.

33. These "minimum competency requirements," or State-prescribed "essential skills," constitute the minimum educational benefits that public instruction must afford to all students not in certain Special Education programs.

34. The defendant officials are aware that relative to their peers in less impoverished and substantially minority districts, decidedly disproportionate members of students n predominantly minority districts fail to acquire State-prescribed essential skills, on which all other educational benefits and opportunities depend.

35. Even if the LEP population in the latter districts are taken into account, the aforementioned disparity in provision of fundamental educational benefits still remains.

36. The defendant officials have not directed ADOE staff to determine whether core curricula and their delivery in predominantly minority districts are at all calculated to impart State-mandated essential skills or to oversee necessary improvements, even though the State Board and Superintendent are aware that the content of instruction in high "at-risk"/minority districts does not fit the State's principal measures of essential skill acquisition by elementary and middle school students.

37. The defendant officials instead have allowed districts to devise their own, individual criteria for determining whether their enrollees have mastered the same State-prescribed essential skills required of all mainstream students throughout the Arizona public school system.

38. Predominantly minority districts are, therefore, permitted to report that most of their students have met minimum competency requirements, when in fact, a majority have not acquired State-prescribed essential skills, according to standards otherwise in use by the State, by

districts serving less impoverished, minority enrollments and by predominantly minority districts themselves.

39. In addition to maintaining above-average LEP enrollments, predominantly minority districts must serve disproportionate members of children at risk of academic failure, due to conditions in families, schools and communities that are not present, to any similar extent, in less impoverished, predominantly Anglo districts.

40. Predominantly minority districts, including NUSD, therefore confront inherent and profound disadvantages, vis-à-vis less distressed, non-minority districts, in trying to impart State-mandated essential skills, especially while simultaneously striving to meet federal and state standards on far more extensive LEP programs; maintain larger and more elaborate remedial or compensatory programs; sustain more extensive dropout prevention efforts; operate physical plants in much poorer condition; and satisfy other legal as well as educational demands that do not tax the resources of less impoverished, majority districts in the same ways or, especially, to the same degree.

41. Under all the aforementioned conditions, which are known to the defendant officials, predominantly minority districts cannot impart State-prescribed essential skills to even a bare majority of their mainstream students, as do less impoverished, majority districts, without additional resources sufficient to overcome exceptional obstacles peculiarly burdening their efforts to fulfill State mandates.

42. The defendant officials administer a state school finance system that not only operates to deprive predominantly minority districts of the means to comply with federal and complementary state prescriptions on LEP instruction, but serve to provide less distressed, predominantly Anglo districts with access to and use of more adequate resources for imparting state-prescribed essential skills than are available to predominantly minority districts, which also remain unable to furnish equal educational benefits and opportunities dependent on satisfaction of the State's minimum competency requirements.

B. Nogales Unified School District

43. The NUSD enrollment is overwhelmingly minority, substantially limited English proficient and similarly lacking in State-mandated essential skills, according to measures regularly employed by the defendant officials and ADOE professional staff.

44. The NUSD enrollment continues to post high scores, relative to state averages, on both individual and composite at-risk measures. These indices accurately reflect socio-economic conditions inimical to acquisition of State-required essential skills and of such contingent educational benefits as graduation from high school and satisfactory completion of academic coursework qualifying students for admission to the State's universities.

45. In the case of NUSD, the defendant officials are chargeable with the omissions and acts summarized in paragraphs 32-42, supra.

46. Although NUSD maintains a local taxing effort comparable to that of other districts with enrollments of similar size, it has succeeded only in maintaining among the lowest per pupil expenditure levels in the State.

47. NUSD substantially lacks the means to impart State-mandated essential skills to a mainstream enrollment with the salient characteristics consistently cited in DOE "at-risk" reports and summarized in Count One as well as Count Two of this Second Amended Complaint.

48. NUSD has not received and under the state school finance scheme administered by the defendant officials, cannot or will not receive resources enabling the district to provide such a minority student body with State-prescribed essential skills, as predominantly Anglo districts of equivalent or greater size generally are able to do, in benefiting from and making effective use of the same fiscal provisions.

C. Claim for Relief

49. The children of the named plaintiffs are limited English proficient, Hispanic, at risk students, and continuing to attend NUSD schools, subject to the acts, omissions, patterns and practices set forth in Count Two, with the result that they lack State-mandated essential skills.

50. The defendant officials consistently have failed to monitor or prescribe improvements in instruction provided by predominantly minority school districts, including - among others - NUSD, to

ensure that curricular content and its delivery are at least calculated to impart State-prescribed essential skills, as is the instruction generally afforded in predominantly Anglo districts, according to the measures and indicators regularly used by the ADOE.

51. The defendant officials administer a school finance scheme that is just sufficient to let less distressed, predominantly Anglo districts impart State-mandated essential skills to their mainstream student bodies, while providing them with some additional, basic educational benefits and opportunities mentioned in this Count, but that does not and will not enable NUSD or similarly situated districts to impart the same State-mandated essential skills to decisively minority enrollments requiring expanded compensatory programs, smaller class sizes and further efforts of like nature in order to acquire them.

52. The defendant officials have adopted methods of administering the State's program of public instruction that have the effect of disproportionately denying these minority children fundamental educational benefits, declared such and mandated for all public school children by the State itself, thus violating 34 C.F.R. Part 100 in respects entitling plaintiffs and the plaintiff classes to permanent injunctive relief vindicating their rights under federal law.

WHEREFORE, plaintiffs respectfully request that the Court:

1. Assume jurisdiction of this action.

2. Certify the class described in paragraph 11, pursuant to Rule 23(a) and (b)(2).

3. Enter a declaratory judgment determining that the acts, omissions, patterns and practices underlying the foregoing claims for relief violate 34 C.F.R. Part 100 and, as applicable, 20 U.S.C. §1703(f).

4. Grant such preliminary and permanent injunctions, prohibitive or affirmative, as may be necessary to effectuate its declaratory judgment and to protect the rights of plaintiffs and all other class members under 20 U.S.C; §1703(f) and 34 C.F.R. Part 100.

5. Grant plaintiffs their reasonable costs of litigation, including their attorneys' and expert witness fees;

6. Grant such other and further relief as the Court deems just and proper in the premises.

DATED this 27 day of November 1996.
ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST

By/s/ David S. Baron
Timothy M. Hogan
David S. Baron
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed first class mail, postage prepaid, this 27 day of November 1996 to:

Appendix A

Ruth Koester, Esq.
Assistant Attorney General
Administrative Law Section
1275 W. Washington
Phoenix, AZ 85007

By/s/ David S. Baron

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, individually and as a parent of Miriam Flores, minor child, et al., Plaintiffs, v. STATE OF ARIZONA; et al., Defendants.	CIV 92-596 TUC ACM CONSENT ORDER

In order to settle certain issues without need for a trial, the parties to this action, by and through their counsel undersigned, hereby enter into this Consent Order.

I. LEP DETERMINATION CRITERIA

A. Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-756(7), the Superintendent of Public Instruction (the "Superintendent") is charged with the selection of a list of tests and the setting of test scores to determine whether a child is limited English proficient ("LEP")- The Superintendent shall carry out this mandate before July 1, 2000. The test scores adopted by the Superintendent as indicating English language proficiency, shall be based on the test vendors' cut scores for each test included on the list prepared pursuant to A.R.S. § 15-756(7).

B. After the list of tests has been compiled and the scores determined, the Superintendent shall distribute that information, as well as any additional explanatory materials that the Superintendent deems necessary, to all school districts and charter schools in the state. The Superintendent shall also designate individuals within the Department of Education (the "Department") as contacts regarding the tests, in the event school districts or charter schools need further information or assistance.

II. PERFORMANCE STANDARDS

A. Duties of the State Board of Education.

The State Board of Education (the "State Board" or the "Board") shall amend its existing rules regarding bilingual education and English as a second language ("ESL") instruction, or enact new rules, that effectuate the following policies:

1. After a student is exited from a Lau program, that exited student shall be reassessed in each of the two years following the student's exit.[1]

---

[1] *Law v. Nichols*, 414 U.S. 563 (1974), requires that school districts provide LEP students with a program of instruction calculated to make them proficient in speaking, understanding, reading, and writing English so that they can achieve the same academic standards required of all other students. Programs that are operated pursuant to the mandate of the *Lau* case are referred to as "*Lau* programs."

2. The reassessment shall consist of tests of the exited student's reading and writing skills, math skills and mastery of academic content areas.
3. The exited student's scores on the reassessment tests shall be compared to the scores of other students of the same age or grade level within the state to determine whether the student is performing at a satisfactory level.
4. In reassessing an exited student's math skills and content area mastery, a school district may use either the regularly administered Arizona Instrument to Measure Standards (the "AIMS Test") or the Stanford 9 Test.
5. In reassessing an exited student's reading and writing skills, a school district may use any of the tests identified by the Superintendent pursuant to A.R.S. § 15-756(7), or it may use any of the tests (if any) identified by the Superintendent pursuant to Section II. B, below.
6. The determination of whether an exited student has performed satisfactorily on the reassessment tests shall be based on the following:
a. If one of the tests selected by the Superintendent pursuant to A.R.S. § 15-756(7) is used as a reassessment test, a student must score at or above the proficiency score established by the Superintendent for that test.
b. If the Stanford 9 Test is used as a reassessment test for math skills and content area mastery, a student must score at or above the proficiency score established by the Superintendent for that test in connection with her responsibilities pursuant to A.R.S. § 15-756(7).

c. If the AIMS test is used as a reassessment test for math skills and content area mastery, a student must meet or exceed the minimum competency standards adopted by the Board pursuant to A.R.S. § 15-203 (the "Board's Academic Standards").
d. If a test selected by the Superintendent pursuant to Section II.B of this Order is used as a reassessment test for reading and writing skills, a student must score at or above the proficiency score established by the Superintendent for that test.
7. Exited students who do not perform satisfactorily on the reassessment tests in the two years following their exit from a Lau program shall, subject to parental consent, be re-enrolled in a Lau program and/or given compensatory instruction aimed at curing the skill or knowledge deficits revealed by the reassessment results.
8. "Compensatory instruction" may include individual or small group instruction, extended day classes, summer school and intersession school.
9. The State Board shall adopt the rules described in this section before December 31, 2000.

B. <u>Duties of the Superintendent.</u>

1. If, after consultation with the testing company that prepared the test at issue, the Superintendent determines that a test for reading and writing assessment selected by the Superintendent pursuant to A.R.S. § 15-756(7) may also be used for reassessment of exited students, such test may be used for reassessment of a student. If such tests are used for reassessment, the test scores used to

determine a student's current English proficiency shall not be lower than the test scores used to initially determine whether the child was LEP.

2. If, after consultation with the testing company, the Superintendent determines that the tests selected pursuant to A.R.S. § 15-756(7) for reading and writing assessment cannot be used for reassessment of exited students, the Superintendent shall select a list of tests that can be used by school districts and charter schools for reading and writing reassessment of students who have been exited from Lau programs. The Superintendent shall also determine the acceptable score for each of the selected tests. An "acceptable score" shall at least be equivalent to the score that would have indicated initially that the student was not LEP, The Superintendent shall create the reassessment test list, if necessary, and determine the required test scores prior to December 31, 2000.

III. ENGLISH LANGUAGE INSTRUCTION

The State Board shall amend its existing rules regarding bilingual education and ESL instruction, or enact new rules, that require the following:

A. Daily instruction in English language development. The English language instruction shall be appropriate to the level of English proficiency and shall include listening and speaking skills, reading and writing skills, and cognitive and academic development in English.

B. Daily instruction in basic subject areas that is understandable and appropriate to the level of academic achievement of the LEP student, and is in conformity with accepted strategies for teaching LEP students.
C. The curriculum of all bilingual education and ESL programs shall incorporate the Board's Academic Standards and shall be comparable in amount, scope, and quality to that provided to English proficient students.
D. The State Board shall adopt the rules described in this section before December 31, 2000.

IV. LEP INDIVIDUAL EDUCATION PLANS

The State Board shall amend its existing rules regarding bilingual education and ESL instruction, or enact new rules, to include the following:
A. On request of a parent or legal guardian with regard to that parent or legal guardian's own LEP student, the principal of the student's school shall require a meeting with the principal or principal's designee, the parent or legal guardian, and the classroom teacher to review the student's progress in achieving proficiency in the English language or in making progress toward the Board's Academic Standards and to make modifications to the student's instruction in order to address identified problems.
B. LEP students who are not progressing toward achieving proficiency of the Board's Academic Standards, as evidenced by failure to improve scores on tests conducted pursuant to A.R.S. §§ 15-741(A)(2) and (3), shall be provided additional compensatory

instruction to help them achieve those academic standards.

C. The modifications to a student's instruction described in Section IV.A of this Order and the compensatory instruction described in Section V. shall be provided in the form of an Individual Education Plan ("IEP").

D. IEPs shall also be provided to students (1) whose school has too few LEP students at a given grade level to require maintenance of a regular bilingual education program or ESL program for that grade level, or (2) whose parents or legal guardians withhold consent to place a student in a regular Lau program.

E. An IEP required by Section IV.D shall be prepared by an IEP team comprised of the school principal or the principal's designee, one of the student's academic subject teachers, the student's Lau program teacher or another certified teacher who has a bilingual education of ESL endorsement, and the parent(s) or legal guardian(s), unless they decide not to participate in the IEP team. If the parent(s) or legal guardian(s) so desire, the IEP team shall also include one advocate for the student selected by the student's parent(s) or legal guardian(s) and/or the student.

F. The IEP team shall determine the scope and/or type of services the student will need to become proficient in English. The curriculum of all IEPs required by Section IV.D shall incorporate the academic standards adopted by the Board pursuant to A.R.S. § 15-701 and shall be comparable in

amount, scope, and quality to that provided to English proficient students.

G. Upon request by the Department, a copy of the IEP shall be submitted to the Department, along with a summary of the student's progress, including academic gain as measured by the AIMS Test, the Stanford 9 Test, or other school assessments for use in the Department's annual English Acquisition Report to the Legislature.

H. The IEP is not required to be implemented by a classroom teacher who possesses a basic or standard certificate to teach and a bilingual or ESL endorsement, and may be implemented by any certificated teacher. In the latter circumstance, however, a teacher who possesses a basic or standard certificate to teach and a bilingual or ESL endorsement shall collaborate with the classroom teacher in the implementation of the IEP, including documentation of periodic reviews of the student's progress toward English proficiency and content area knowledge, as well as plans to remedy any lack of progress.

I. The State Board shall adopt the rules described in this section before December 31, 2000.

V. MONITORING

A. Duties of the State Board.

The State Board shall amend its existing rules regarding bilingual education and ESL instruction, or enact new rules, to include the following:

Appendix B

1. If the monitoring report described in Section V.B of this Order indicates that a school district or charter school is not in compliance with state or federal laws regarding LEP students, the district or charter school shall submit a corrective action plan to the Department within sixty days from the date of the report.
2. The State Board shall adopt the rules described in this section before December 31,2000.

B. Duties of the Superintendent.

1. The Superintendent shall direct the Department to monitor each year at least twelve school districts or charter schools from the fifty school districts or charter schools in this State with the highest number of LEP students. The Department shall monitor all fifty school districts or charter schools with the highest number of LEP students in the State at least once every four years.
2. The Superintendent shall direct the Department to monitor each year at least ten school districts or charter schools that are not included in the fifty described in Section V.B.I of this Order.
3. The Superintendent shall direct the Department to monitor each year at least ten school districts or charter schools that, pursuant to A.R.S. § 15-754, "are not required to provide bilingual education programs or ESL programs for a majority of their grade levels.
4. The school districts and charter schools described in the previous Sections V.B.1., 2., and 3. of this Order shall be chosen in the Department's sole

discretion based upon the Department's review of the reports submitted pursuant to A.R.S. § 15-755.

5. In addition, the Department shall monitor of any school district or charter school if the Department receives a documented, written complaint from any citizen, or a complaint from the United States Department of Education or from the United States Office of Civil Rights regarding a district's or charter school's compliance with state or federal law regarding LEP students.

6. The monitoring required by this Section V shall be on-site monitoring and shall include classroom observations, curriculum reviews, faculty interviews, student records, and a review of LEP programs. The Department may use bilingual education or ESL endorsed personnel from other schools to assist with the monitoring.

7. Based on the results of its monitoring, the Department shall determine whether or not the school district or charter school is complying with state and federal laws applicable to LEP students.

8. The Department shall issue a report on the results of its monitoring within forty-five days after completing the monitoring.

9. Within sixty days following the issuance of the Department's report, the district or charter school receiving the report shall prepare and submit to the Department a corrective action plan that sets forth steps that will be taken: to correct the deficiencies (if any) noted in the Department's report.

10. Within thirty days after its receipt of a district's or charter school's corrective action plan, the Department shall review such corrective action plan,

and may require changes to the corrective action plan.

11. After the Department has reviewed a district's or charter school's corrective action plan and has made any changes it determines are necessary, the corrective action plan shall be returned to the district or charter school.

12. Within thirty days after receiving its corrective action plan back from the Department, the district or charter school shall begin implementing the measures set forth in its corrective action plan.

13. The Department shall conduct a follow-up evaluation of the district or charter school within one year after the date it issued the changed corrective action plan.

14. If the Department finds continued non-compliance during the follow-up evaluation, the district or charter school shall be referred to the State Board for a determination, pursuant to A.R.S. § 15-755(D), of non-compliance for purposes of continuing to receive group B weight funds for LEP students, as described in A.R.S. § 15-943. A district or charter school determined to be non-compliant pursuant to this subsection shall not reduce the amount of funds spent on its LEP programs as the result of its loss of group B weight funds for its LEP students because of its continued non-compliance.

15. The Department shall monitor all districts or charter schools that the State Board has determined, pursuant to A.R.S. § 15-755(D), are non-compliant and are no longer receiving group B weight funds for LEP students to ensure that such districts or charter schools do not reduce the amount of funds spent on

their bilingual education programs as the result of its loss of group B weight funds.

16. The Department shall begin the monitoring described in this section before July 1, 2000.

APPROVED AS TO FORM AND CONTENT this 30th day of June, 2000.

ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST

By /s/ Timothy M. Hogan
Timothy M. Hogan
Attorneys for Plaintiffs

JANET NAPOLITANO
Attorney General

By /s/Lynne C. Adams
Lynne C. Adams
Assistant Attorney General
Attorneys for Defendants

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, individually and as a parent of MIRIAM FLORES, a minor child, et. al., Plaintiffs, v. STATE OF ARIZONA; et al., Defendants.	CIV 92-596 TUC ACM **ORDER**

Background: Motion for Post-judgment Relief

On January 24, 2000, this Court issued a declaratory judgment against the Defendants for failing to provide limited English proficient (LEP) children with a program of instruction calculated to make them proficient in speaking, understanding, reading, and writing English, while enabling them to master the standard academic curriculum as required of all students. See Lau v. Nichols, 414 U.S. 563 (1974) (failure to provide English instruction to students of Chinese descent who do not speak English denies them a meaningful opportunity to participate in public education and violates Title VI, 42 U.S.C. § 2000d). The Court's ruling came against a backdrop of state inaction, existing in 1992 when Plaintiffs filed the class action law suit and continuing through the duration of the case.

Appendix C

This Court held that as a matter of law the State's minimum base level for funding Lau programs[1] bears no relation to the actual funding needed to ensure that LEP students are achieving mastery of the State's specified "essential skills," (Judgment at 23.) The Court ruled that the State's appropriation of $150.00 per LEP student is arbitrary and capricious because it is not reasonably calculated to effectively implement the Lau programs adopted by the Nogales Unified School District (NUSD), which have been approved by the State. (Judgment at 23.) The Court made this finding based on a 1987-88 cost study that showed it cost approximately $450.00 per LEP student to provide Lau program instruction.

At the time the Court ruled, Defendants questioned the reliability of their own 1987-88 cost study. Defendants attacked their studies' credibility because it was so old, and the methodology for the study was not ascertainable and, therefore, its integrity was questionable. The State had never updated the 1987-88 study. At trial, the Defendant informed the Court that the State legislature had established the English as a Second Language and Bilingual Education Study Committee to conduct a cost study to determine the amount of funding provided by the State and Federal governments for English instruction of LEP students and the amount of money being spent by schools to educate those students. In the Judgment issued by this Court

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[1] Now being called the English Acquisition program (EAP).

January 24, 2000, the Court noted that this was the first step the State needed to take towards setting a minimum base funding level for Lau programs that would not be arbitrary and capricious. (Judgment at 23.) The Committee was supposed to submit the report to the Governor's office by December 19, 1999, to recommend the level of funding necessary to support the programs that it determined to be the most effective. The Report was timely submitted, but it failed to contain the recommendations for funding levels. After the regular legislative session convened in January, 2000, Plaintiffs sent a letter to the legislature asking that the cost study be performed. A Senate bill was introduced that would have provided for the study, but it was defeated. Several amendments were also defeated which would have provided funding for the State Department of Education to perform the cost study. The legislative session ended April 18, 2000, with the State continuing its pattern of inaction.

June 6, 2000, Governor Hull convened a special session on education to address a 0.6 funding increase in the state sales tax for specified educational programs. Lau programs were removed from the list of permissible items to be funded by the state sales tax. Again, the legislature rejected an amendment that required the state to conduct the cost study of *Lau* programs. On June 30, 2000, Governor Hull signed the bill providing for the increase in state sales tax to finance education. Again, the state failed to take any action to fund Lau programs in Arizona at a level reasonably calculated to make LEP students proficient in speaking,

understanding, reading, and writing English. Contrary to the information provided to this Court in January of 2000, the State has not even taken the first step of conducting the cost study.

Against this backdrop, Plaintiff's Motion for Post-judgment Relief asks this Court to order the Sate to conduct the cost study by November 1, 2000, so that the State legislature will be in a position to fund Arizona's Lau programs during its next legislative session, which begins January 1, 2001. This is especially important because Arizona has a biannual budget so unless funding is secured this session, LEP students will have to wait until 2003 to see any improvement in funding for Lau programs.

Defendants, however, suggest that further delay is necessary because conducting the cost study now is unrealistic and counterproductive in light of the Consent Decree entered in this action in June, 2000. Now that Defendants have agreed to make procedural and substantive revisions to the State Lau programs, as sought by Plaintiff's in this very class action law suit, the cost study can only be conducted after the changes are implemented and in place for some period of time. Only then, after the Department of Education has had an opportunity to determine which programs are working well, should the cost of the Lau Programs be calculated. Besides, there is a referendum item, Proposition 203, on the November ballot which will repeal the existing bilingual education statutes and adopt a one-year immersion program for LEP students.

Defendants propose that during this next legislative session the Department of Education will

ask the legislature to provide $300,000 in funding to conduct the cost study and perform the monitoring required under the Consent Decree. If funded by the legislature, the study would begin in the summer of 2001 and be complete in the spring of 2002. This would be just in time for the next biannual budget in 2003.

This Court is not surprised by Defendants' suggestion to continue to delay appropriating adequate funding for Lau programs in Arizona, nor is the Court surprised by the continued inaction of the State legislature. See Roosevelt Elementary School District No. 66, et al., v. C. Diane Bishop. (Roosevelt I) 877 P.2d 806 (1994) (en banc), appeal after remand, Hull v. Albrecht, (Roosevelt II) 950 P.2d 1141 (1997), appeal after remand, (Roosevelt III) 960 P.2d 634 (1998) (continued legislative refusal to take action as directed by the state courts to remedy disparities in school financing). The Court is, however, surprised by the Defendants' brazen argument that a cost assessment cannot be done now because it should not be "based on models that have not been getting the job done." (Response at 3.)[2] For example, Defendants argue: "A study of the state's English Acquisition Programs prior to implementation of the changes envisioned by the Consent Order would, however, be just that-an assessment of the costs of a system that both plaintiffs and defendants agree was not appropriate." Id.

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[2] This same language is reflected in Proposition 203.

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This Court Order of January 24, 2000, made 64 specific Findings of Fact and not one criticized the Lau models being used to teach LEP students in Arizona. The parties agreed "that the State of Arizona has prescribed, and NUSD has adopted, models that are generally regarded by experts as sound designs for effective Lau instruction." (Judgment at 22.) The Judgment entered by this Court was that the primary reason the Lau programs failed LEP students in Nogales, Arizona, was because the programs were not adequately funded by the State.

Plaintiffs' Reply accurately reflects the findings and conclusions of this Court, as follows:

...The Court determined in its Conclusions of Law that the State of Arizona had prescribed, and NUSD had adopted, models that are generally regarded by experts as sound designs for effective Lau instruction. Judgment at 22, Conclusion of Law (A)(3). The Court further concluded that the state's minimum $150 appropriation per LEP student, in combination with its property based finance scheme, is inadequate and has resulted in the following Lau program deficiencies:

1. Too many students in a classroom.
2. Not enough classrooms.
3. Not enough qualified teachers, including teachers to teach ESL and bilingual teachers to teach content area studies.
4. Not enough teacher aides.
5. An inadequate tutoring program, and

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6. Insufficient teaching materials for both ESL classes and content area courses.

These deficiencies are not the result of an inadequate model. The model was prescribed by the state and adopted by NUSD. *Id.* at 22. The problem is the state's inadequate funding to support the model.

Reply at 4-5 (citing Judgment at 22.)

This Court agrees with Plaintiffs, as follows:

There is no reason to wait to address [the] cost of the deficiencies identified by die Court. The cost implications of those deficiencies have not changed as a result of the Consent Order. The Consent Order did not change the models for providing bilingual and ESL instruction at all. Instead, the Consent Order prescribes implementation procedures for those models. . . . While there may be additional cost implications associated with the Consent Order, they are most assuredly modest compared to the structural funding problems identified by the Court.

Reply at 4-5. Additionally, the Court adds that even if Proposition 203 passes there will still be costs associated with the "new" English immersion model. There are costs which are common to all programs of instruction for LEP students.

The Court is not persuaded that a specific model must be implemented and successfully operating before a cost assessment can be prepared.

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Cost studies are routinely performed prior to implementing a model and serve the useful purpose of comparing costs of various models. Models do not become successfully operational without funding; therefore, it is Defendants' proposal to wait that is unrealistic and counterproductive. Unless, a realistic cost assessment is prepared and available this legislative session, which begins January 8, 2001, Plaintiffs will miss the biannual budget process and will have to wait until 2003 for Lau programs to be funded at a level that is not arbitrary and capricious.

Judgment having been entered against Defendants, Plaintiff is entitled to equitable relief. Alaska Center for the Environment v. Browner, 20 F.3d 981, 986-87 (9th Cir. 1994) (district court has broad latitude to fashion equitable relief when necessary to remedy an established wrong); Swan v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15-17 (1971) (if school authorities fail in their affirmative obligations . . ., judicial authority may be invoked). The "remedial powers of an equity court must be adequate to the task, . . . they are not unlimited,'" Missouri v. Jenkins, 495 U.S. 33, 51 (1990) (quoting Whitcomb v. Chavis, 403 U.S. 124, 161 (1971), "and one of the most important considerations governing the exercise of equitable power is proper respect for the integrity and function of local government institutions." Jenkins, 495 U.S. at 51. Obviously, here, the equitable relief requested by Plaintiffs encroaches on a domain that primarily belongs to local government institutions, including the State's legislature. Therefore, the Court

exercises it equitable power conscientiously and takes every step to allow state authorities, whose powers are plenary, to decide how to provide LEP students with a meaningful Lau program. Assessing the cost of such a program, however, does not involve public policy considerations. Against the egregious backdrop of state agency and judicial inactivity, the Court must grant Plaintiffs' requested relief because without judicial action, the federal law violations as set out in this Court's Order of January 24, 2000, will continue for at least another three years.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion for Post-Judgment Relief is GRANTED.

IT IS FURTHER ORDERED that Defendants, the State of Arizona, shall prepare a cost study to establish the proper appropriation to effectively implement the State's Lau educational theory.

IT IS FURTHER ORDERED that the cost study shall be prepared in a timely fashion so that the Arizona legislature can appropriate funding for Lau programs during the upcoming biannual budget session, beginning January, 2001.

IT IS FURTHER ORDERED that as to the one remaining issue in this litigation, teacher certification or language endorsements, a Pretrial Conference shall be held before this Court on November 3, 2000 at 11:30 a.m.

Dated this 12th day of October, 2000.

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/s/ Alfredo C. Marquez
Senior U.S. District Judge

Appendix D

United States District Court, D. Arizona.

Miriam FLORES, individually and as a parent of Miriam Flores, a minor child, et. al., Plaintiffs,
v.
STATE of Arizona, et. al., Defendants.
No. CIV. 92-596TUCACM.

June 25, 2001.

ORDER
MARQUEZ, Senior District J.

Post-judgment Relief

On January 24, 2000, this Court issued a declaratory judgment against the Defendants for failing to provide limited English proficient (LEP) children with a program of instruction calculated to make them proficient in speaking, understanding, reading, and writing English, while enabling them to master the standard academic curriculum as required of all students. (See Findings of Fact and Conclusions of Law (citing Lau v. Nichols, 414 U.S. 563 (1974) (failure to provide English instruction to students of Chinese descent who do not speak English denies them a meaningful opportunity to participate in public education and violates Title VI, 42 U.S.C. § 2000d)). The Court's ruling came against a backdrop of state inaction, existing in 1992 when Plaintiffs filed the class action law suit and continuing through the duration of the case.

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This Court held that as a matter of law the State's minimum base level for funding Lau programs[1] bears no relation to the actual funding needed to ensure that LEP students are achieving mastery of the State's specified "essential skills." (Judgment at 23.) The Court ruled that the State's appropriation of $150.00 per LEP student is arbitrary and capricious.

This was the basis upon which this Court entered its Order of October 12, 2000 granting post-judgment relief and ordered the State to prepare a cost study to establish the proper appropriation to effectively implement the State's Lau educational theory. In that Order, the Court ordered that the cost study should be prepared in a timely fashion so that the Arizona legislature could appropriate funding during the budget session beginning January 1, 2001.

While the cost study was completed, the legislature did not consider funding the Lau programs. Therefore, Plaintiffs seek further post-judgment relief. On May 22, 2001, Plaintiffs filed a Motion for injunctive relief, asking the Court to set a deadline for the State to comply with the Court's January 24, 2000 Declaratory Judgment. Specifically, Plaintiffs asked the Court to set a date by which Defendants shall remedy the arbitrary and capricious nature of the State's minimum base level that it appropriates per LEP student. Plaintiffs asked the Court to consider its request for further

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[1] Now being called the English Acquisition Program (EAP).

post-judgment relief on an expedited basis so that any injunction issued by the Court would be in place in the event a special session of the state legislature convenes. The State objected to the request for an expedited ruling, but did not file a Response to the Motion for Injunctive Relief.

On June 8, 2001, the Court held a hearing on Plaintiffs' Motion for Injunctive Relief. Defendants argued that the Department of Education should study the issues further and prepare a recommendation to the legislature regarding appropriate funding levels. The Court rejected these arguments and granted the Plaintiffs' Motion for Injunction. The Court issued a Minute Entry setting a deadline for the end of January 2002, for the state to comply with the Declaratory Judgment issued January 24, 2000 and ordered that if the Governor calls a special session of the Arizona legislature, the call shall include the necessary agenda item to ensure legislative compliance during the special session. The Court asked counsel for Plaintiffs to prepare a formal Order for its signature. Plaintiffs' counsel has submitted such an Order, which basically paraphrases the Court's civil minute entry. Defendants object.

Defendants assert that this Court has no power to order the Governor to place the issue of Lau funding on the agenda of a legislative special session. Defendants note that the January 24, 2000 Order, was declaratory in nature and asks that a supplemental Order be issued to set out the precise aspects of the Declaratory Judgment, which require compliance. First, these arguments should have

been made in response to the Motion for Injunction or at oral argument. Second, while the Judgment granted for Plaintiff was declaratory, the Court's Findings of Facts and Conclusions of Law set out the specific violations upon which the Court based its Declaratory Judgment.

Just as these findings were an adequate basis for the issuance of this Court's post-judgment directive to the State to perform the cost study, these findings are an adequate basis for this Court to grant Plaintiff's request for further injunctive relief. On January 24, 2000, this Court held that as a matter of law the State's minimum base level for funding Lau programs was arbitrary and capricious because it bears no relation to the actual funding needed to ensure that LEP students are achieving mastery of the State's specified "essential skills." (Judgment at 23.) Until remedied, Defendant fails to comply with the declaratory judgment and Plaintiffs are entitled to equitable relief.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion for Injunctive Relief, filed May 22, 2001, (document # 217) is GRANTED.

IT IS FURTHER ORDERED that on or before January 31, 2002, Defendants shall comply with the Court's Declaratory Judgment, filed January 24, 2000. Specifically, the State's minimum base level of funding per LEP student shall not be arbitrary and capricious, but shall bear a rational relationship to the actual funding needed to implement language acquisition programs in Arizona's schools so that

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LEP students may achieve mastery of the State's specified "essential skills."

Appendix E

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, individually and as a parent of Miriam Flores, a minor child, et al., Plaintiffs, v. STATE OF ARIZONA; et al., Defendants.	CIV 92-596-TUC-ACM ORDER

Post-judgment Relief

The Court's Declaratory Judgment, issued January 24, 2000, determined that the state's minimum level for funding Lau[1] programs is arbitrary and capricious and "bears no relation to the actual funding needed to ensure that LEP[2] students" are achieving mastery of the state's academic standards.

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[1] Lau v. Nichols, 414 U.S. 563 (1974) (failure to provide English instruction to students of Chinese decent who do not speak English denies them a meaningful opportunity to participate in public education and violates Title VI, 42 U.S.C. § 2000(d)).

[2] These children are now being referred to as "English Language Learners (ELL)," rather than as "Limited English Proficient (LEP)" students.

(Findings of Fact and Conclusions of Law (Declaratory Judgment) at 23 (Document 196).) Since entry of the favorable Judgment, Plaintiffs have twice sought post-judgment relief. The motion now pending before the Court, "Second Motion for Injunction," is the third.

On October 12, 2000, the Court ordered the State to conduct a cost study to determine a funding level, which would effectively implement English language acquisition programs in Arizona. (Order at 6 (Document 209).) The intent of the Order was to provide the legislature with a realistic cost estimate during the legislative session, beginning January 8, 2001, so that funding could be appropriated during that regularly scheduled biannual budget process. The cost study was completed in May of 2001, but the legislature did not appropriate funding for language acquisition programs during the regular session. Subsequently, Plaintiffs sought and were granted further post-judgment relief. On June 25, 2001, the Court ordered the State to comply with the directives of the January 24, 2000 Declaratory Judgment by the end of any special session convened by the State legislature. (Order at 3-4 (Document 226)). In other words, the State had until the end of any convened special session to set a minimum base level of funding per ELL[3] student, which bears a rational relationship to the actual funding needed to

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[3] See n. 2.

implement language acquisition programs in Arizona's schools.

A special session was convened on November 13, 2001, and on December 19, 2001, the legislature enacted HB 2010 to address the mandates of Flores. The legislature has changed the funding formula to increase funding per ELL student from .06 (approximately $178.78 per student) to 1.15 (approximately $339.91). This amount reflects the costs that the Nogales Unified School District (NUSD) was incurring as reported in the 2001 cost study.

The legislation also appropriated special funding for the following: 1) teacher training ($4.5 million); 2) compensatory instruction capped at $100 per student ($5.5 million), and 3) instructional materials and supplies at $10 per student ($1.5 million). Additional money, not necessarily related to language acquisition programs, was appropriated as follows: 1) $316,094 for the Department of Education to monitor school districts; 2) $3,060,00 for a bonus program that provides $250 to school districts for each student that it reclassifies out of the English acquisition program; 3) $750,000 for a K-3 literacy program; and 4) $500,000 for another cost study.

The motion now pending before the Court challenges HB 2010. Plaintiffs argue that the $339 per ELL student appropriated by HB 2010 is every bit as arbitrary and capricious as the $150 per LEP

student appropriation, which this Court invalidated in its January 24, 2000 Order. It too violates Title VII, 42 U.S.C. § 2000(d) because it fails to have any rational relationship to the actual cost of implementing a language acquisition program. The special related appropriations found in HB 2010 are equally arbitrary and capricious because Arizona has never set specific standards for its programs, nor identified the requisite elements, features, or components for such programs and, therefore, has never assessed actual costs for language acquisition programs.

HB 2010 can not rely on what NUSD spent on its program because it was the very program that this Court's Declaratory Judgment held to be deficient for a number of specific reasons on January 24, 2000. For example, the Court specified that NUSD's Lau program violated the EEOA as follows: 1) too many students in a classroom; 2) not enough class rooms; 3) not enough qualified teachers,[4] including teachers to teach ESL and bilingual teachers to teach content area studies; 4) not enough teacher aids; 5) an inadequate tutoring program; and 6) insufficient teaching materials for both ESL classes and content area courses. (See Declaratory Judgment: Conclusions of Law at ¶ 7.)

In January of 2000, the State legislature had created the English as a Second Language (ESL) and

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[4] See also (Declaratory Judgment; Findings of Fact at ¶ 53.)

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Bilingual Education Study Committee (Education Study Committee) to: 1) determine the cost of educating LEP students versus what is currently being spent; 2) determine the best practices in bilingual education and ESL; 3) look at ways to improve bilingual education in the school districts across the state; and 4) determine if programs are in compliance with state and federal mandates. (See Declaratory Judgment: Findings of Fact) at ¶ 11.) The Court noted that this study was aimed at more accurately assessing LAU program costs and would provide a basis for the State to set a minimum base funding level per LEP student which would not be arbitrary and capricious. (Declaratory Judgment: Conclusions of Law at ¶ at 9 (citing Roosevelt II, 950 P.2d 1141, 1145 (1997) (performing an equal protection analysis, the Roosevelt Court held that it could only determine the adequacy of the State's program once a minimum standard had been set).[5] The Court specifically found that "[f]or the State to adopt appropriate practices and allocate adequate resources, it must first establish minimum standards for providing LAU funding and program oversight." (Declaratory Judgment: Conclusions of Law at ¶ 4.)

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[5] Roosevelt Elementary School District No. 66, et al. v. C. Diane Bishop, (Roosevelt I) 877 P.2d 806 (1994) (en banc), appeal after remand, Hull v. Albrecht, (Roosevelt II) 950 P.2d 1141 (1997), appeal after remand (Roosevelt III) 960 P.2d 634 (1998) (equal protection analysis applied to claim that Arizona's school financing scheme violated the General and Uniform Clause of the Arizona Constitution).

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To date, the only task completed of those assigned to Education Study Committee in 2000, is the determination of what is currently being spent. With modifications to reflect the passage of Arizona's English Immersion program, the following tasks remain: determine the best practices in language acquisition programs and look at ways to improve Arizona's language acquisition programs so that they are in compliance with federal and state law mandates, and determine the costs of operating such programs in Arizona. Completing these tasks will enable the legislature to establish minimum standards, upon which it can base its cost assessments for funding Arizona's language acquisition programs.

Accordingly,

IT IS ORDERED that Plaintiffs' "Second Motion for Injunction" (Document 234) is GRANTED.

IT IS FURTHER ORDERED that the State shall perform a cost study, including all of the elements necessary for the legislature to determine a cost actually related to the operation of an English Immersion program.

IT IS FURTHER ORDERED that the deadline for completing the cost study is January 1, 2003.

IT IS FURTHER ORDERED that the deadline for the State's compliance with the Declaratory

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Judgment entered in this case on January 24, 2000, shall be extended to June 30, 2003.

D.. .D this 5 day of April, 2002.

/s/ ALFREDO C. MARQUEZ
ALFREDO C. MARQUEZ
Senior U.S. District Judge

Appendix F

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, individually and as a parent of Miriam Flores, a minor child, et al., Plaintiffs, v. STATE OF ARIZONA; et al., Defendants.	CIV 92-596-TUC-ACM ORDER

On April 19, 2002, the Court received Defendant's Motion for Reconsideration of its Order issued April 11, 2002, which denied Defendants leave to supplement their Response with a declaration from Ron Hennings. The Defendants also asked the Court to reconsider the Order, filed April 8, 2002, which granted Plaintiffs second request for injunctive relief. On April 30, 2002, the Court reconsidered the April 11th Order and allowed the Defendant's to file the Hennings declaration. The Hennings declaration and the Defendant's Motion for Reconsideration provide the details that this Court has needed to make an informed assessment as to whether or not the State's funding for Arizona's language acquisition programs is rationally related to actual program costs. In light of the details and explanations given in the State's Motion to

Reconsider, including the Hennings declaration, and the Reply, the Court finds that the State has taken appropriate action to address the directives issued in this case, especially since the Legislature adopts the new funding under HB 2010 as an interim measure pending further study and review. "Because the legislature recognized that its funding levels may require further adjustment, and the HB 2010 cost study has not been completed, the Defendants have not asked the Court to terminate this litigation." (Reply at 10.) At this interim point in time, the Court finds that the funding levels appropriated in HB 2010 bear a rational relationship to the estimated cost of implementing the language acquisition program in Nogales Unified School District (NUSD).

Accordingly,

IT IS ORDERED that Defendant's Motion to Reconsider (document 253) is GRANTED and this Court's Order, filed April 8, 2002, is VACATED.

IT IS FURTHER ORDERED that Plaintiff's Second Motion for Injunctive Relief is DENIED.

DATED this 7th day of June, 2002.

/s/ Alfredo C. Marquez
Alfredo C. Marquez
Senior U.S. District Judge

Appendix G

LAW OFFICE OF
DAVID CANTELME, P.L.C.
A Professional Liability Corporation
3101 NORTH CENTRAL AVE, SUITE 720
PHOENIX, ARIZONA 85012

(602) 200-0104 Fax (602) 200-0106
E-mail:djc@cantelaw.com
David J. Cantelme, Arizona State Bar No. 006313
Attorneys for the Speaker of the Arizona
House of Representatives and for the
President of the Arizona Senate

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Miriam Flores, individually and as a parent of Miriam Flores, a minor child, et al., Plaintiffs, v. State of Arizona; et al., Defendants.	**No.** CIV 92-596-TUC-RCC **MOTION TO INTERVENE OF SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES AND PRESIDENT OF THE ARIZONA SENATE** Assigned to Honorable Raner C. Collins

Pursuant to Rules 24(a) and (b), F.R.Civ.P., the Speaker of the Arizona House of Representatives

("Speaker") and President of the Arizona Senate ("President") move to intervene in this action, on behalf of their respective bodies, to defend the plan for English Language Learners ("ELL") adopted by the Arizona Legislature in H.B. 2064, otherwise to defend the interests of the Legislature in this action, and to oppose the plan for distribution of accrued fines proposed by the Attorney General. Intervention of right is proper under Rule 24(a) because the Court already has subjected the Legislature to its order of December 15, 2005, the Legislature has Art. III standing under the circumstances and its interests are not represented adequately by defendants. Permissive intervention is proper under Rule 24(b), for the reasons applicable to Rule 24(a) and for the additional reasons of common questions of law and fact with the defenses that should be made by existing defendants in this case.

MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION.

On March 8, 2006, the Arizona House and Senate authorized their respective presiding officers to appear herein for them. On March 2, 2006, the Legislature passed H.B. 2064 ("Act"), and the Governor elected to allow it to become law without her signature. On March 3, 2006, the Attorney General filed the Act with the Court, together with the Governor's March 3, 2006, letter noting her objections to the Act. The two branches of state government have a deep split over how best to teach youngsters to speak English, what federal law

requires for ELL, and how to comply with the Court's orders. This split puts the Attorney General in an awkward if not impossible position. The Attorney General has a legal duty to defend the Act and the plan it adopts. Yet one must acknowledge that he has shown little enthusiasm for advancing the interests of the Legislature, as most recently illustrated by his filing of the Governor's objections to the Act and of his proposal for distribution of accrued fines. Because the Governor has elected to allow the Act to become law, her objections are irrelevant and should not have been brought before the Court, unless the Attorney General intends to advance them in opposition to the Act, despite his duty to defend it. As shown below, intervention is appropriate under Rules 24(a) and (b). It is essential to a fair resolution to allow a full defense of the Act and the Legislature's interests, rather than the guarded defense that must result if presented by counsel who must answer to a State government divided by huge differences over the case. A proposed motion to purge the contempt is attached as exhibit, minus the exhibits to that motion.

2. INTERVENTION OF RIGHT.

The Ninth Circuit has stated the test for intervention of right as follows:

(1) the intervention application is timely; (2) the applicant has a significant protectable interest relating to the property or transaction that is the subject of the action; (3) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the

existing parties may not adequately represent the applicant's interest.

Prete v. Bradbury, No. 04-35285, slip op. at 6 (9th Cir., 2/22/06). The test is met here.

a. Intervention is Timely.

Intervention is timely for the purposes set forth in this motion. While the case is old, the Court subjected the Legislature directly to one of its orders for the first time on December 15, 2005, and the Act in direct response to that order was adopted on March 2, 2006. Thus intervention now to defend the Act is timely.

b. The Legislature Has a Direct and Protectable Interest.

The Legislature has a direct and protectable interest in this matter. In the order of Dec. 15, 2005, the Court ordered that "the legislature has 15 calendar days from the beginning of the 2006 legislative session to comply with the January 28, 2005 Court order." Therein the Court subjected the Legislature directly to one of its orders, in an exercise of the Court's equitable powers. *See* Dec. 15, 2005, order at 11 ("This power has been relied on to hold city and state legislatures in contempt. *See Spallone v. United States*, 493 U.S. 265, 276 (1990)"). After this order's issuance, with the citation to *Spallone*, the Legislature effectively has become a party to this case, willingly or not. Having been subjected to the Court's contempt power, the Legislature should be afforded a chance to defend itself.

The Legislature has sufficient interest to intervene in any event apart from the December 15,

2005, order.[1] It adopted the Act and thus has a right to defend it. *See Karcher v. May*, 479 U.S. 72 , 82 (1987) (Speaker of the N. J. General Assembly and President of the N. J. Senate could intervene to defend an act passed by the N.J. Legislature); *Silver v. Pataki*, 755 N.E. 2d 842, 848 (N.Y. 2001) (Assembly member "undoubtedly has suffered an injury in fact with respect to the alleged unconstitutional nullification of his vote sufficient to confer standing.") Both Houses have authorized their officers to bring this motion, thus clearing the capacity hurdle of *Bennett v. Napolitano*, 206 Ariz. 520, 527, ¶29, 81 P.3d 311 (2003).

c. The Disposition in This case Will Directly Affect the Legislature.

An unfavorable disposition in this action will directly impair the Legislature's ability to protect its interest. If the Court finds the Act to be inadequate

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[1] Neither the Supreme Court nor the Ninth Circuit has said whether Art. III standing is required to intervene of right. *Prete, supra*, at 9 n. 8. A majority of circuits considering the issue have held Art. III standing is not required. *Compare Ruiz v. Estelle*, 161 F.3d 814, 832 (5th Cir. 1998) (no independent intervenor standing needed); *Associated Builders & Contractors v. Perry*, 16 F.3d 688, 690 (6th Cir. 1994) (same); *Chiles v. Thornburgh*,, 865 F.2d 1197, 1212 (11th Cir. 1989) *U.S. Postal Serv. v. Brennan*, 579 F.2d 188, 190 (2d Cir. 1978) (same), *with Planned Parenthood of Mid-Missouri & Eastern Kansas, Inc. v. Ehlmann*, 137 F.3d 573, 576-77 (8th Cir. 1998) (requiring independent intervenor standing) *and Building & Const. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994) (same).

to satisfy the Court's orders, the Court may compel the Legislature to return to the task and to find money to pay for increased spending, the Court may ratchet up the penalty for disobedience of its order, and the Legislature will be prevented from turning its attention to other pressing State business.

d. Only the Legislature Can Defend Its Interests Adequately.

The existing parties will not defend the Legislature's interests adequately. The Attorney General faces an institutional dilemma in trying to serve two masters. As a result, neither he nor his predecessor has represented the interests of the Legislature adequately; to wit: The Attorney General failed to take an appeal of the judgment entered in this case in 2000 and has failed to appeal any of the injunctions and other orders issued in aid of the judgment, most recently having failed to take an appeal of the order of December 15, 2005. Yet the Attorney General acknowledged to the Legislature that the Motion for Clarification of Court's order that the Attorney General filed on January 18, 2006, "perhaps . . . should not have been before the court." *See* excerpt of unofficial transcript, at 3, attached as Exhibit 1 to Memorandum of the Speaker of the Arizona House Responding to the Order of January 27, 2006, of Representatives and of the President of the Arizona Senate. This inadequacy was shown further at the hearing of Feb. 13, 2006, when the Attorney General went so far as to oppose the stay of the Dec. 15, 2005 order requested by the Superintendent of Public Instruction. *See* Transcript of Hearing of Feb. 13, 2006, at 13, line 23, to 14, line

7. The Attorney General has admitted in testimony that the Legislature should have its own counsel:

Chairman Burns, I'd be delighted to do that. And I understand I was just given today a letter from the Speaker requesting from the court for the opportunity to appear in this case. That is something that I applaud and I believe it is highly appropriate. Up until now, basically the Legislature has used surrogate appearances with Mr. Home's counsel before this court. And that's been kind of awkward. Perhaps the best solution is the one that's just been applied for.

See excerpt of unofficial transcript, *supra*, at 1.

Nor can the Superintendent represent the interests of the Legislature, though he has gone on record supporting the Act. The Superintendent's difficulty is that his institutional interests are not the same as the Legislature's. He does not share the power to appropriate, which is the core interest affected herein. What's more, plaintiffs have challenged the Superintendent's standing to appeal the sanctions order. The Superintendent will have no power, if plaintiffs succeed, to defend the Legislature's interests in this case.

3. PERMISSIVE INTERVENTION SHOULD BE GRANTED.

The Ninth Circuit has stated the test for permissive intervention as follows:

(1) independent grounds [exist] for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common.

League of Un.. Latin Am. Cit. v. Wilson, 131 F.3d 1297, 1308 ¶ 40 (9th Cir. 1997). This test is met here. As shown above, the Legislature has Art. III standing to intervene and defend the Act and the Court already has subjected the Legislature to the order. The Legislature's intervention to defend the Act is timely, and the Act will be the center of the battle over whether the State has complied with the Court's orders and purged itself of contempt.

4. CONCLUSION.

For these purposes, the Court should allow the Speaker and President to intervene.

RESPECTFULLY SUBMITTED on March 7, 2006.

LAW OFFICE OF DAVID CANTELME, P.L.C.

/s/_____

David J. Cantelme
3101 N. Central Avenue, Suite 720
Phoenix, AZ 85012
(602) 200-0104
Attorneys for the Speaker of the Arizona House of Representatives and for the President of the Arizona Senate

CERTIFICATE OF SERVICE

I CERTIFY THAT ON, 2006, I mailed a copy of the foregoing to:

The Honorable Raner C. Collins
United States District Court
Evo A. DeConcini U.S. Courthouse
405 West Congress Street, Suite 5170
Tucson, AZ 85701-5051

Appendix G

I FURTHER CERTIFY that I electronically transmitted the attached document to the Clerk's Office using the CM/CEF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Timothy M. Hogan thogan@aclpi.org
Joy Herr-Cardillo jherrcardillo@aclpi.org
Lynne Christensen Adams ladams@lrlaw.com; cmarino@lrlaw.com
Jose A. Cardenas jcardenas@lrlaw.com; kwochos@lrlaw.com
David A. Garner jgarner@lrlaw.com; pnavarro@lrlaw.com
James J. Sienicki jsienicki@swlaw.com
Ronald W. Messerly rmesserly@swlaw.com
Keith F. Overholt koverholt@jsslaw.com
Michael J. Farrell mfarrell@jsslaw.com
Susan P. Segal susan.segal@azag.com
Eric J. Bistrow EBistrow@bcattorneys.com

/s/ David J. Cantelme

Appendix G

EXHIBIT 1 TO MOTION TO INTERVENE

LAW OFFICE OF
DAVID CANTELME, P.L.C.
A Professional Liability Corporation
3101 NORTH CENTRAL AVE, SUITE 720
PHOENIX, ARIZONA 85012

(602) 200-0104 Fax (602) 200-0106
E-mail:djc@cantelaw.com
David J. Cantelme, Arizona State Bar No. 006313
Attorneys for the Speaker of the Arizona
House of Representatives and for the
President of the Arizona Senate

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Miriam Flores, individually and as a parent of Miriam Flores, a minor child, et al., Plaintiffs, v. State of Arizona; et al., Defendants.	**No.** CIV 92-596-TUC-RCC **MOTION OF INTERVENOR DEFENDANTS SPEAKER AND PRESIDENT TO PURGE THE STATE OF ARIZONA OF CONTEMPT AND MOTION TO DISSOLVE INJUNCTION**

Appendix G

Assigned to Honorable Raner C. Collins

Intervenor defendants Speaker of the Arizona House of Representatives ("Speaker") and President of the Arizona Senate ("President") move the Court to purge the State of Arizona from the contempt found by the order of December 15, 2005, for the following reasons: The Arizona Legislature has adopted H.B. 2064 ("Act"), the Act will become law on March 9, 2006, and it creates a plan for adequate funding of programs for English Language Learners ("ELL"). The Act also satisfies applicable federal law and the judgment and orders of this Court when considered in itself and in conjunction with the massive reforms of Arizona K-12 education. Those reforms include (i) the adoption of the Students FIRST program for school construction and renovation, (ii) the huge infusion of funding to K-12 schools occasioned by the six-tenths of a cent hike in the State sales tax under Proposition 301, and (iii) Congress's adoption of the No Child Left Behind Act ("NCLBA") in 2001. The Speaker and President further move to dissolve the injunction entered on June 25, 2001, because NCLBA preempts the Court's authority to compel State adoption of an ELL plan.

MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION.

A party found in civil contempt must be given an opportunity to purge itself of the contempt. See

United States v. Ayres, 166 F.3d 991, 997 (9th Cir. 1999) ("Civil contempt sanctions, however, are only appropriate where the contemnor is able to purge the contempt by his own affirmative act . . . . "). Compensatory civil contempt sanctions must end once a party has proven that it is purged of the contempt. *See Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 516 (9th Cir. 1992). The Speaker and President show below: (a) The Act complies in all material respects with the judgment of this Court; and (b) apart from the Act itself, enormous reforms of Arizona K-12 education have taken place since 2000. These reforms include implementation of Students FIRST, the Proposition 301 sales tax increase, and enactment of NCLBA, and these reforms have been reflected in performance. According to the results found on the Department of Education website, a majority of Arizona schools made adequate yearly progress in 2004-05, including NUSD's ELL students.

Finally, in NCLBA Congress adopted a comprehensive school reform plan that requires accountability, improvement, and remedies for failing schools, and thereby preempts the Court's authority to issue a *Lau*-type of injunction, which has become obsolete.

2. THE ACT OVERHAULS ELL INSTRUCTION IN ARIZONA.

This summarizes the Act's key provisions. The Act:

a. More than doubles the Group B weight for ELL to 0.140, Sec. 6 (A.R.S. § 15-943(l)(b)), increasing from the 0.65 ELL weight that existed when judgment was entered;

b. Continues to provide for identification of ELL students, Sec. 4 (A.R.S. § 15-756);

c. Creates a task force to develop research-based models for English immersion instruction, that takes into consideration significant but varying factors, such as location and size of the school, affected grade levels, the number of ELL students and the percentage of school population comprised by ELL students, and that requires a minimum of four hours per day of English instruction in the first year of instruction, Sec. 4 (A.R.S. §15-756.01);

d. Allows school boards to adopt one or more of the English immersion instruction models, *id.* (A.R.S. § 15-756.02);

e. Creates a structured English immersion fund, *id.* (A.R.S. § 15-756.04), and allows districts to submit an annual budget request to the fund to supplement the district's Group B ELL weights to pay for the district's structured English immersion teaching plan, *id.* (A.R.S. § 15-756.03);

f. Creates a compensatory instruction fund, allows districts to submit annual budget requests to the fund, and directs that such funding be used to provide compensatory instruction to ELL students that can include individual tutoring or small group instruction, extended day classes, and summer school and intersession school, all directed to ELL students or to former ELL students who have become English proficient, *id.* (A.R.S. § 15-756.11);

g. Continues to provide for ELL student testing to identify ELL students who have become English proficient and provides for reclassification of ELL students who have become English proficient, *id.* (A.R.S. § 15-756.05)

h. Provides for revaluation of former ELL students who have become English proficient at least once a year to guard against retrogression, *id.* (A.R.S. § 15-756.06)

i. Directs the State Superintendent to monitor district progress, *id.* (A.R.S. § 15-756.08); and

j. Requires the state auditor general every two years to audit each school district's ELL effectiveness, *id.* (A.R.S. § 15-756.12), and Sec. 7 (A.R.S. § 41-1279.03).

3. MASSIVE REFORMS OF ARIZONA EDUCATION SINCE 2000.

Arizona has poured money into the NUSD, as well as all other Arizona districts, as a result of the enormous changes in Arizona school finance that have occurred since Judge Marquez issued his two injunctions, though admittedly the changes did not occur in a single package. Nonetheless these changes have revolutionized Arizona's method of funding school construction and renovation, have substantially increased teacher salaries and funding for aides and tutoring, and have more than doubled the Group B weights for ELL instruction.

In response to *Roosevelt Elem. S. D. v. Bishop*, 179 Ariz. 233, 877 P.2d 806 (1994), *appeal after remand Hull v. Albrecht*, 190 Ariz. 520, 950 P.2d

1141 (1997), *appeal after remand*, 192 Ariz. 34, 960 P.2d 634 (1998), the Legislature enacted the Students FIRST Act of 1998, Ch. 1, 1998 Ariz. Sess. Laws (5th S.S.) Therein the Legislature adopted minimum physical standards for Arizona classrooms and school buildings, and centralized funding for school construction in the State Facilities Board. The Legislature also created three school funds: The Deficiencies Correction Fund ("DCF"), the Building Renewal Fund ("BRF"), and the New School Construction Fund ("NSCF"). *See Roosevelt Elem. S.D. No. 66 v. State of Arizona*, 205 Ariz. 584, 586 ¶¶ 4-5, 74 P.3d 258 (App. 2003). The Legislature intended the DCF to correct existing deficiencies, the BRF to maintain existing school plants, and the NSCF to fund new construction. According to the SFB, the State paid about $19.0 million to NUSD in 1999-2001 to correct deficiencies in the district's physical plants. According to the SFB website, thereafter the State paid an additional $2.98 million to NUSD for the years 2002-05 for deficiencies correction and building renewal. The State has brought the NUSD facilities up to the State's minimum school building standards. The SFB keeps statistics per school per district showing all funds spent to date for deficiencies correction and building renewal. Thus a break down is available for all renovations made to all schools in the NUSD under Students FIRST.

At the 2000 election, the voters adopted Proposition 301, which added six-tenths of a cent to the State sales tax and devoted this money to Arizona universities and school districts. For the

years 2001-04, Prop 301 has sent at least $1.5 million per year to NUSD. *See* Report of State Auditor General on Classroom Dollars and Proposition 301 Results for 2004 and for 2001; copies attached as exhibit 1.

Finally, Congress adopted NCLBA in 2001, and this has required NUSD, as well as all other Arizona school districts, to adopt district improvement plans, assessments disaggregating data in a number of categories (including ELL students), and to adopt school-specific remediation plans for failing schools.

4. THE JUDGMENT IS SATISFIED.

The results of the increase in Group B weights and the adoption of Students FIRST, Proposition 301, and NCLBA, have been dramatic. Average NUSD teacher salaries increased from $31,121 in 2001 to $39,050 in 2004. *See* exhibit 1. In 2004 the NUSD average teacher salaries exceeded the state average of $38,534, NUSD average teacher years of experience equaled the state average of 8.7 years, and the NUSD student/teacher ratio equaled the state ratio of 18.2. *Id.*

These changes have had a measurable effect in NUSD. According to the Department of Education website, the 2004-05 Title III AMAO Determinations reflect that the NUSD ELL subgroup made adequate yearly progress for that year, though NUSD is in year one of an improvement plan and NUSD overall has not made adequate yearly progress. In contrast with the district as a whole, eight of ten NUSD schools did make adequate yearly progress in 2004-

05 under NCLBA, according to the Department of Education website. *See* Arizona District Report Card 2004-05, Nogales Unified School District; excerpt attached as exhibit 2. In addition, all ten district schools were labeled as performing under AZ Learns. *Id.*

Turning to specifics, a comparison of the deficiencies identified by Judge Marquez in *Flores v. Arizona*, 160 F.Supp.2d 1043, 1046 (D. Ariz. 2000), to applicable provisions of the Act and other post-2000 reforms shows that the judgment has been satisfied in every respect:

a. Too many students in a classroom: By 2004, the student/teacher ratio was reduced to 18.2 per classroom, the same as the 2004 statewide average. *See* exhibit 1.

b. Not enough classrooms: Students FIRST has brought NUSD up to state standards.

c. Not enough qualified teachers: NUSD average teacher experience equals the State average of 8.7 years. *See* exhibit 1. The number of certified teachers in NUSD rose from 296 in 2001 to 322 in 2004. *Id.*

d. Not enough teacher aides: The Act has increased Group B weights and creates the structured English immersion fund, which allows districts to fund these positions in the district's discretion.

e. An inadequate tutoring program: The Act creates the compensatory instruction fund to pay for individual tutoring and small group instruction.

f. Insufficient teaching materials for both ESL classes and content area courses. The increased

Group B weights and immersion fund pays for these materials as well.

Judge Marquez recognized that federal courts did not have authority to substitute their judgment for that of state officials on what makes the best method for teaching English learners. Thus he left it up to the Legislature to craft a program that is not arbitrary and capricious. The Legislature now has done so and has addressed every concern that Judge Marquez identified. One must acknowledge that a great divide exists between those who want to stick with the old bilingual method of English instruction and those who want to substitute English immersion for it, and we believe that division discomfited the attempts to adopt a State ELL plan. No matter. Arizona voters approved Proposition 203, which adopts English immersion as official state policy. The Act now before the Court implements that policy while satisfying the judgment. The Court should purge the contempt.

5. THE ACT DOES NOT SUPPLANT EXISTING FUNDING.

The Act more than doubles Group B weights from 2000 funding levels and creates the structured English immersion fund, and the compensatory instruction fund. The Act prevents the use of the two funds to supplant existing federal or state funding. *See* A.R.S. § 15-756.04(F) ("Monies from the [structured English immersion] fund shall not be used to supplant available monies used to pay normal costs of conducting programs for English

proficient students"); A.R.S. § 15-756.11(G) ("Monies [from the compensatory instruction fund] shall not be used to supplant any federal, state, or local monies .. .. ").

6. NCLBA PREEMPTS AUTHORITY TO COMPEL ELL PLAN ADOPTION.

a. Judge-Made Pre-NCLBA Remedies.

20 U.S.C. § 1703(f) prohibits an educational agency from denying "equal educational opportunity to an individual" by "the failure to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. § 1706 provides a private remedy for a violation. As noted by Judge Marquez, when Congress adopted 20 U.S.C. §§ 1703(f) and 1706, it did not define the meaning of equal education opportunity:

> As noted by the court in *Castaneda*, Congress has provided us with almost no guidance, in the form of text or legislative history, to assist us in determining the standard to apply when considering whether a language remediation program is "appropriate." This is the type of task which federal courts are ill-equipped to perform.

Flores v. Arizona, 48 F.Supp. 2d 937, 948-49 (D. Ariz. 1999). To bridge the gap left by Congress, the Fifth Circuit adopted a three-part test to determine denial of equal education opportunity for ELL students in *Castaneda v. Pickard*, 648 F.2d 989, 1009-10 (5th Cir.

1981.) The test requires a court to determine whether (a) a state is pursuing a remediation program "informed by an educational theory recognized as sound by some experts in the field," 648 F.2d at 1009; (b) the program is reasonably "calculated to implement the educational theory adopted by the school," *id.* at 1010; and (c) the program has been successful after a legitimate trial period. *Id.* Judge Marquez found that NUSD failed this test, *Flores v. State*, 172 F.Supp. 2d 1225, 1240 (D. Ariz. 2000), and that the EEOA authorized injunctive relief to remedy the District's denial of equal opportunity to its ELL students. *Flores v. State*, 160 F. Supp, 2d 1043, 1047 (D. Ariz. 2000). Congress adopted NCLBA after Judge Marquez entered judgment, and thus Judge Marquez never considered or decided the question of whether NCLBA preempted his authority to order compliance with the *Castaneda* test. A review of NCLBA establishes that in it Congress has preempted the Court's authority to issue a *Lau*-type injunction, and accordingly the injunctions in this case should be dissolved.

b. NCLBA Remedies.

After the Fifth Circuit decided *Castaneda* in 1981, and Judge Marquez decided *Flores* in 2000, Congress adopted the NCLBA. NCLBA significant changes in ELL program structure, accountability, assessments, and remediation. With these changes, Congress now has occupied the field, determined

what makes an effective language remediation program, determined what specific remediation measures should be applied for failing ELL programs, and preempted the courts' authority to devise their own relief, as in *Castaneda* and *Flores*.

The NCLBA requires States to:

(i) Establish measurable objectives for ELL students, 20 U.S.C. § 6311(b)(2)(C)(v)(II)(dd);

(ii) Establish a start point for measuring the percentage of students meeting or exceeding the State's level of academic proficiency, 20 U.S.C. § 6311(b)(2)(E);

(iii) Create a timeline showing how, not later than 12 years from 2001-02, all ELL students, among others defined in 20 U.S.C. § 6311 (b)(2)(C)(v), will meet or exceed the proficiency standards, 20 U.S.C. § 6311(b)(2)(F);

(iv) Devise measurable objectives, 20 U.S.C. § 6311(b)(2)(G), and intermediate goals, 20 U.S.C. §6311(b)(2)(H),

(v) Disaggregate assessment results by specified categories, including ELL students, 20 U.S.C. § 6311(b)(3)(C)(xiii);

(vi) Publish an annual state report card, 20 U.S.C. § 6311(h)(1)(A), including data disaggregated for ELL students, 20 U.S.C. § 6311(h)(1(C)(i); and

(vii) Require local education agencies to

-- Develop a local education agency plan, 20 U.S.C. § 6312(a)(1);

-- Describe therein how it will integrate and coordinate services for ELL students, among others, 20 U.S.C. § 6312(b)(1)(E)(ii);

-- Describe its plan to assist low-achieving schools as identified in 20 U.S.C. §6316;

-- Ensure that minority and low-income children are not taught at lower rates by unqualified, out-of-field, or inexperienced teachers; and

-- Make adequate yearly progress, 20 U.S.C. §6311(b)(2)(I), and 20 U.S.C. § 6316(b).

If a school fails to make adequate yearly progress, a two-year detailed plan of remediation must be implemented. 20 U.S.C. § 6316(b)(3). If adequate progress is not made in the first year after the failing identification is made, corrective measures must be adopted, 20 U.S.C. § 6316(b)(7), including at least one of the measures identified in 20 U.S.C. § 6316(b)(7)((C)(iv). The district must provide technical assistance to the failing school, 20 U.S.C. § 6316(b)(4), and an opportunity also must be provided to students to transfer out of the failing school. 20 U.S.C. § 6316(b)(1)(E). If the failure to make adequate yearly progress continues for another year, the school is subject to restructuring, which can include replacing the school's administration, reopening the school as a charter school, hiring private managers to run the school, or providing for state takeovers of the school. 20 U.S.C. § 6316(b)(8).

c. NCLBA Preempts the EEOA.

As *Castaneda* and *Flores* both recognized, the EEOA does not define an equal education opportunity and it does not define appropriate relief. In contrast, NCLBA is detailed, specific, and mandatory with respect to opportunities, standards,

and remedies. Under the preemption doctrine, the later, more comprehensive and specific act, is deemed to create an exception to the earlier, more general act. *See, e.g., Brown v. G.S.A.*, 425 U.S. 820, 834 (1976) (under the principle that "a precisely drawn, detailed statute pre-empts more general remedies," court holds that sec. 11 of the Equal Employment Opportunity Act of 1972 pre-empts sec. 717 of the Civil Rights Act of 1964 in federal job discrimination). *Cf. Louisiana Pub. Serv. Comm'n v. F.E.C.*, 476 U.S. 355, 368 (1986) (preemption of state law implied "where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law . . . .") Congress's preemption of *Lau* injunctions becomes even more apparent considering that in *Flores* and *Castaneda* the standards for determining a denial of equal education opportunity, and the remedies for a denial, were made by courts to fill gaps left by Congress. Courts had no choice. Now NCLBA closes the gaps, and makes a *Lau* injunction obsolete.

7. CONCLUSION.

For these reasons the Court should deem the State to have purged the contempt order.

RESPECTFULLY SUBMITTED on March __, 2006.

LAW OFFICE OF DAVID CANTELME, P.L.C.

Exhibit 1 to motion to intervene

Appendix G

By: David J. Cantelme
3101 N. Central Avenue, Suite 720
Phoenix, AZ 85012
(602) 200-0104
Attorneys for the Speaker of the Arizona House of Representatives and for the President of the Arizona Senate

CERTIFICATE OF SERVICE

I CERTIFY THAT ON, 2006, I mailed a copy of the foregoing to:

The Honorable Raner C. Collins
United States District Court
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405 West Congress Street, Suite 5170
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Timothy M. Hogan thogan@aclpi.org
Joy Herr-Cardillo jherrcardillo@aclpi.org
Lynne Christensen Adams ladams@lrlaw.com; cmarino@lrlaw.com
Jose A. Cardenas jcardenas@lrlaw.com; kwochos@lrlaw.com
David A. Garner jgarner@lrlaw.com; pnavarro@lrlaw.com
James J. Sienicki jsienicki@swlaw.com
Ronald W. Messerly rmesserly@swlaw.com

Appendix G

Keith F. Overholt koverholt@jsslaw.com
Michael J. Farrell mfarrell@jsslaw.com
Susan P. Segal susan.segal@azag.com
Eric J. Bistrow EBistrow@bcattorneys.com

Appendix G

ARIZONA HOUSE OF REPRESENTATIVES JOURNAL OF THE FORTY-SEVENTH LEGISLATURE, SECOND REGULAR SESSION (MARCH 8, 2006)

NORMAN MOORE
CHIEF CLERK
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844
PHONE: (602) 926-3032
FAX: (602) 417-3084
nmoore@azleg.state.az.us

Arizona House of Representatives
Phoenix, Arizona 85007

March 8, 2006

I HEREBY CERTIFY that the attached is a true and accurate copy of the portion of the Arizona House of Representatives Journal of the Forty-seventh Legislature, Second Regular Session of Wednesday, March 8, 2006 which contains a motion made by Representative Tully and passed by roll call vote.

/s/ Normal L. Moore
Normal L. Moore
Chief Clerk

Appendix G

Motion by Mr. Tully:

Whereas, even though the House of Representatives believes it is clear under the House rules, the Arizona Constitution and case law, that the Speaker of the House of Representatives is authorized to represent the entire body in various matters, including litigation, but nevertheless the Arizona Supreme Court in Bennett v. Napolitano did not recognize this authority.

Therefore, I move that the House of Representatives, Forty-seventh Legislature join with the Senate to move to intervene in the case of Flores v. State, U. S. District Court cause CIV92-596-TUC-RCC, to represent the interests of the Legislature in this case and to defend the new state plan for English language learners as enacted in H.B. 2064 passed by the Legislature on March 2, 2006 and allowed to become law by the Governor on March 3, 2006. To accomplish this purpose the House authorizes the Speaker to represent the interests of the House of Representatives and take all appropriate action on its behalf in any matter related to the Flores litigation, including acting jointly with the Senate President to act on behalf of the Legislature as a whole.

Passed by the following roll call vote:

AYES 39: Allen J, Anderson, Barnes, Barto, Biggs, Boone, Burges, Burns J, Carpenter, Chase, Farnsworth, Gorman, Gray C, Groc, Hershberger,

Huffman, Jones, Knaperek, Konopnicki, Mason, McClure, McComish, McLain, Murphy, Nelson, Nichols, O'Halleran, Paton, Pearce, Pierce, Quelland, Reagan, Robson, Rosati, Stump, Tully, Weiers JP, Yarbrough, Speaker Weiers J

NAYS 21: Aguirre A, Alvarez, Bradley, Brown, Burton Cahill, Cajero Bedford, Downing, Gallardo, Garcia M, Kirkpatrick, Landrum Taylor, Lopes, Lopez, Lujan, McCune Davis, Meza, Miranda B, Prezelski, Rios P, Sinema, Tom

Appendix G

CHARMION BILLINGTON
SECRETARY OF THE SENATE

Arizona State Senate
Phoenix, Arizona

March 8, 2006

I HEREBY CERTIFY that the attached is a true and accurate copy of the portion of the Arizona Senate Journal of the Forty-seventh Legislature, Second Regular Session of Wednesday, March 8, 2006 which contains a motion made by Senator Bee and passed by roll call vote.

/s/ Charmion Billington
Charmion Billington
Secretary of the Senate

1700 W. Washington, Senate Wing, Room 2003, Phoenix, AZ 85007
Phone: (602) 926-4231; Fax (602) 926-3429 EMAIL: cbilling@azleg.state.az.us

Appendix G

Motion by Senator Bee:

Whereas, even though the Senate believes it is clear under the Senate Rules, the Arizona Constitution and case law, that the President of the Senate is authorized to represent the entire body in various matters, including litigation, but nevertheless the Arizona Supreme Court in Bennett v. Napolitano did not recognize this authority;

Therefore, I move that the Arizona State Senate, Forty-seventh Legislature join with the House of Representatives to move to intervene in the case of Flores v. State, U.S. District Court cause CIV92-596-TUC-RCC, to represent the interests of the Legislature in this case and to defend the new state plan for English language learners as enacted in H.B. 2064 passed by the Legislature on March 2, 2006 and allowed to become law by the Governor on March 3, 2006. To accomplish this purpose the Senate authorizes the President to represent the interests of the Arizona State Senate and take all appropriate action on its behalf in any matter related to the Flores litigation, including acting jointly with the Speaker of the House to act on behalf of the Legislature as a whole.

Senator Bee requested a roll call vote. Support for a roll call vote was supported by Senator Burns. The motion passed by the following vote:

Appendix G

AYES 17: Allen, Bee, Blendu, Burns, Cannell, Flake, Gray, Harper, Hellon, Huppenthal, Jarrett, Johnson, Leff, Martin, Tibshraeny, Waring, President Bennett

NOES 13: Aboud, Aguirre, Arzberger, Brotherton, Cheuvront, Garcia, Gould, Hale, Miranda, Mitchell, Rios, Soltero, Verschoor

Appendix H

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, individually and as parent of Miriam Flores, a minor child, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	No. CV92-596 TUC-RCC **ORDER**

Pending before the Court is the Plaintiff's Motion for Civil Contempt (Docket No. 671). The Motion has been fully briefed by the parties and the Court held a non-evidentiary hearing on this matter on August 27, 2007.

Civil contempt sanctions are non-punitive and avoidable, as such there are fewer procedural protections required before the imposition of such sanctions. *U.S. v. Ayres*, 166 F.3d 991, 995 (9th Cir. 1999) (quoting *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994)). Therefore, a court may impose sanctions in an ordinary civil proceeding upon notice and an opportunity to be heard. Id. at 827, 114 S.Ct. 2552. The Plaintiff specifically sought sanctions against the Legislative-Intervenors for contempt. However, the Plaintiff's motion clearly seeks contempt sanctions for the failure to comply

with the Court's Order on March 22, 2007. All the Defendants were present at the hearing and all Defendants responded to the Plaintiff's motion. As such the Court finds it appropriate to consider the motion for civil contempt against all the Defendants.

This case has been pending before the Court since August 20, 1992. However, the actions relevant to the Plaintiff's Motion for contempt have occurred since the March 22, 2007 Order was issued. After an evidentiary hearing, the Court found HB 2064 impermissibly imposed a two-year limitation on funding for English Language Learners (ELL) instruction and impermissibly took into consideration federal funds received under the Elementary and Secondary Education act in determining the amount of funding available to districts and schools. Additionally, the Court found although HB 2064 instituted a system of cost-based funding using instructional models to be developed by a task force to be implemented for the 2007-2008 school year, until the task force models were funded, the ELL programs still were funded arbitrary and capriciously and bore no rational relation to the actual funding needed to insure ELL students the mastery of the State's academic standards. The Court ordered the State to comply with the Original Order by the end of the 2007 Legislative Session.

Prior to the end of the 2007 Legislative Session no action was taken to comply with the Original Order. According to the Legislative-Intervenors on September 20, 2007, the ELL instruction models were approved by the Task Force and finally able to be published to all Arizona school

districts. However, since the models were not approved until after the 2007-2008 school year had begun, the Legislative-Intervenors contend the earliest schools could receive funding rationally related to help ELL students overcome their language barriers that impair their equal participation in public schools is the beginning of the 2008-2009 school year.

A party can be held in civil contempt when there is clear and convincing evidence a party willfully violated a specific and definite order of the Court. F.T.C. v. Affordable Media, LLC, 179 F.3d 1228, 1239 (9th Cir. 1999).

In this case, there was a specific and definite order of the Court. The Court's March 22, 2007 Order, "[o]rdered that the State has until the end of the current Legislative Session to comply with the Original Order." The Original Order found the State's funding of the ELL programs bore no rational relation to the actual funding needed to insure the ELL students could achieve mastery of the State's academic standards. In the March 22 Order, the Court held HB 2064 was not in compliance with the original order in three ways.

First, HB 2064 impermissibly imposed a two-year limitation on funding for English Language Learners (ELL) instruction. The Court's Order, until altered, amended, or vacated, invalidated this provision.

Second, HB 2064 impermissibly took into consideration federal funds received under the Elementary and Secondary Education act in determining the amount of funding available to

districts and schools. The Court's Order, until altered, amended, or vacated, invalidated this provision. Although the Structured English Immersion Budget Request Form sent to the schools requests information about federal funds and describes the Federal funds as off-sets, so long as the federal funds are not considered when the State appropriates a rational amount of funds for the ELL programs there has been no contempt of the Court's Order with regard to this provision.

Finally, the Court found that "[o]nce the State has chosen an instructional method, it must provide sufficient funding to implement that method." The Court's Order did not appropriate these funds. It is undisputed when the Legislative Session ended these funds still were not appropriated nor was there any attempt to appropriate these funds. Therefore, by clear and convincing evidence the State willfully violated the clear and specific March 22 Order of the Court.

Once the moving party has shown the willful violation of a clear and specific order, the burden shifts to the contemptuous party to show why they were unable to comply. *Affordable Media*, 179 F.3d at 1239. In this case, the State, which includes the Legislative and Executive branches, can certainly comply with the Order of appropriating funds for the ELL programs. The State's only defense to inability to comply is that they were unable to accumulate the required information from the schools in order to rationally fund the new models for the ELL programs.

Appendix H

According to the Legislative-Intervenors, now that the models have been published to the schools, the only steps remaining are for the school districts to complete the budget forms and submit them to the Superintendent who will then submit them to the legislature. The Legislature can then appropriate the funds and the Governor can approve them. As the Legislative-Intervenors admit, it is possible for the ELL programs to have the rational amount of funds appropriated for the 2008-2009 school year by the end of February 2008. Therefore, IT IS HEREBY ORDERED:

The Plaintiff's Motion for Civil Contempt (Docket No. 671) is GRANTED.

FURTHER, the State of Arizona is ORDERED to appropriate funds for the ELL Programs that are rationally related to helping ELL students overcome their language difficulties in compliance with the Court's March 22, 2007 Order by March 4, 2008.

FURTHER, if on March 4, 2008, the State fails to comply with this Order, the Court will then levy appropriate sanctions.

FURTHER, it is ORDERED that all Defendants, including the State of Arizona, the Superintendent of Public Instruction, the State Board of Education, and the Legislative-Intervenors use their best efforts within the powers granted to them by the Arizona Constitution, Arizona Statutes, and the Arizona Regulations to ensure compliance with the March 22, 2007 Order by March 4, 2008.

FURTHER, since the Plaintiff's Motion for Civil Contempt is granted, it is therefore ORDERED the Defendants are to pay Plaintiff's reasonable

attorneys' fees in connection with the prosecution of this civil contempt proceeding. Plaintiff's counsel is to submit calculations for said attorney's fees and a proposed order for the Court to approve.

DATED this 10th day of October, 2007.

/s/ Raner C. Collins
Raner C. Collins
United States District Judge

Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 10, 2007 9:17 a.m.

[BUTTERFIELD, T-2, 31-35]

Excerpt from Testimony of Karen Butterfield

* * *

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. . .

Q. Okay. So the parents can get their 6 youngsters into it, the principals can get their youngsters into it, and the teachers can get their youngsters into it?

A. Correct.

Q. This has been going on now for about six years; is that right?

A. Actually, no, since -- basically since 2004-05, once the underperforming, failing schools were identified.

Q. Okay. So the last three years, then, more or less?

A. Correct.

Q. Is word getting out? Because that's always an issue, you can have a great program if it's not known, it won't be used. Is word getting out now, Dr. Butterfield?

A. I feel it is, and I think this list that is a part of the documentation here demonstrates the increase in the number of LEAs and charter schools and providers who have taken advantage of this state

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tutoring fund.

Q. Now, Dr. Butterfield, I said 41 and I was wrong. How many have you actually got on this chart?

A. It's close to -- I believe it's around 198.

Q. How many school districts have we got in the state? In the 230s?

A. Yes. Yes.

Q. That tells me that most districts are getting this help if they want it; is that fair to say?

A. Correct, that's fair to say.

Q. Nogales ever been turned down for anything they wanted out of this fund?

A. No.

Q. Let's move on to the next one. And this is where we come to the 41, I believe.

Now, Dr. Butterfield, explain to us, if you would, what this next fund, this AIMS intervention and dropout prevention, is intended to do?

A. Again, as statute 15-809 specifies, it is focusing on those high school students who are at risk of dropping out and who need assistance and AIMS Intervention/Dropout Intervention strategies.

Q. Now, when did the legislature create this program?

A. It was created in --

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Q. Since 2000?

A. Yes.

Q. How is this program funded, if you would, please?

A. This is funded by the state legislature.

Q. How much money did they put in this year?

A. We now have $5.2 million in the fund.

Q. Okay. Has the amount grown under the superintendent's leadership with the legislature's cooperation?

A. Yes, it has.

Q. Explain how it's gone up.

A. When I first came to the department within the Title V arena in November of 2003, at that time there were only five to six participants in the program, with approximately $500,000, and then in 2005-2006 we offered two rounds of funding opportunities for the additional $5 million.

Q. So there was $500,000 -- make sure I got this right -- 500,000 to start with, 5 million more has been added to it?

A. Correct.

Q. Each year?

A. Well, let me clarify. The very first year that this program began, which I think was around

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2000, 2001, there was only one grantee for $50,000. After that it gradually increased with a variety of funding sources, mainly from the state.

Q. Okay. Now, if we're up to 41 and if my mental arithmetic tells me, we're about 20-percent coverage of our districts in Arizona?

A. Yes.

Q. Nogales part of this one?

A. No, they're not.

Q. Why not?

A. They just did not apply for the funds specifically.

Q. Okay. Explain that process to us, if you would, please, the application process, how it works.

A. The application process is a competitive grant process, and the Department of Education provides specific grant application training so that applicants will have a very strong application so that they will not be denied funds, and then the ADE sets up a grant review or application review committee, goes through those applications and then begins the awarding process.

Q. Do any districts not get a grant?

A. Yes.

Q. Why not?

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A. Two applicants did not receive funds last year.

Q. Two out of 43?

A. Correct.

Q. What happened to them?

A. They just did not meet the criteria of the grant whatsoever or had a very poorly written application.

Q. Is there help so they get better for the next year?

A. Yes, oh, we provide feedback and if -- many of those two did request feedback regarding, you know, what did we do that -- why didn't we get funded, what can we do better to give us a stronger chance of getting the funding later?

Q. So these two districts know what they didn't do right and they can fix it for next year?

A. That's correct.

* * *

[BUTTERFIELD, T-2, 42-49]

Excerpt from Testimony of Karen Butterfield

* * *

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. . .

So the state average about one out of two, Nogales two out of three?

A. Correct.

Q. They're doing better than the rest of the state?

A. Yes, they are.

Q. Then let's go to the next item, please.

A. Percent of ELL students who were tutored in Nogales who passed at least one part of the AIMS test was at the state average of 35 percent.

Q. So our children that didn't speak English to start with that are learning it, one out of three of them has been passing AIMS?

A. Correct.

Q. In Nogales?

A. In Nogales.

Q. About the same for the whole state of Arizona, though; correct?

A. That's correct.

Q. Okay. Going to the next item, Dr. Butterfield, the percent of reclassified students.

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A. The percent of reclassified students in Nogales who again passed at least one section of the AIMS test was at 95 percent.

Q. Now, these are the young men and women that didn't speak English to start with but got English in Nogales?

A. Yes, and they were exited from the program.

Q. They're doing pretty good, then, aren't they?

A. Yes, because the state average is 68 percent.

Q. So more than nine out of ten of those children that learned English in Nogales are passing AIMS?

A. That's what this shows.

Q. And that's not true for the state of Arizona 15 as a whole?

A. Correct.

Q. But in the state as a whole still 68 percent, or more than two-thirds, are passing it?

A. Yes.

Q. For our reclassified or our children who have learned English in Arizona schools?

A. That is correct.

Q. Let's move on to the next item, please.

A. The next set is measuring the percent of all students in Nogales who passed all three sections of

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the AIMS test, and that is at 27 percent.

Q. Now, to make sure I've got this right, Dr. Butterfield, this is not limited just to seniors?

A. Correct.

Q. So you got sophomores --

A. Excuse me. For that particular pot of funding it was for the juniors only who had failed AIMS.

Q. Okay. Let me just talk about AIMS for a minute so we can be sure on what children are taking it and when they're taking it. We actually start with our sophomores; right?

A. That's correct.

Q. They get their chance to pass AIMS?

A. Correct.

Q. They pass it, they're done with it, they don't have to mess with it anymore?

A. That's correct.

Q. They don't make it, they come back as a junior?

A. That's correct.

Q. They try it again?

A. Correct.

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Q. Now, they don't make it as a senior, you don't graduate anymore?

A. That is also correct.

Q. Okay. That's why it's given over three years?

A. Yes.

Q. So kids really get a third chance or more?

A. Actually, they have five opportunities to pass the test.

Q. Five chances to pass AIMS. Those that aren't making it, you've got the special help for them?

A. Yes, we do.

Q. Now, let's come back to where we were. Of the juniors that got this one-shot 10 million, those juniors in Nogales, 27 percent passed?

A. Correct. All three sections of the test.

Q. Now, if you pass one section, you don't have to take that -- you don't pass the rest, you don't have to take that section over again, do you?

A. That is correct.

Q. So if you pass, I don't know if it's math or whatever it is, if you pass it you're done with it?

A. That is correct.

Q. Okay. How about statewide?

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A. Statewide that percentage is only 2 percent.

Q. Now --

A. Back in 2005.

Q. In 2005 27 percent of our juniors in Nogales passed all of AIMS, only 2 percent statewide?

A. Correct.

Q. What's Nogales doing right? Something.

A. Something is right there.

Q. Okay. Then let's move to the next item. Percent of ELL students tutored in Nogales. Now, once they fail, that's when you start giving them tutoring; is that it? Have I got that right?

A. Correct.

Q. Okay. So the ones that aren't making it, you find them, you start teaching them special, they might pass or may not. How many actually did pass?

A. Well, it was 10 percent of the ELLs in Nogales, that junior group.

Q. How did we do statewide?

A. Only 2 percent.

Q. Okay. Then the last item, percent of reclassified students, those are the kids that have learned English in our schools in Nogales who passed all of AIMS?

A. The reclassified students, that percentage

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was 63 percent who passed all three sections.

Q. Now, those are the reclass --

A. Reclassified.

Q. That got the special tutoring?

A. And they were exited from their ELL program.

Q. Unfortunately, statewide it's not as good?

A. Back in 2005, correct.

Q. Okay. Now, what are we doing to fix it?

A. First of all, within the Title III English Acquisition Services Unit, with the SEI endorsement, with all the teacher training we are doing with SEI strategies, with the focus on ensuring that every student graduates on time with a diploma, I feel schools are taking this very seriously and school leaders and teachers have much better resources and tools at their fingertips than they ever had before.

Q. It's a new day, isn't it, Dr. Butterfield?

A. Yes, it is. The landscape has dramatically changed.

Q. You've been teaching in Arizona or working at the State Department of Education about 30 years or more, if I got it right?

A. That is correct.

Q. Since 1975?

A. Correct.

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Q. You've seen a lot of changes?

A. Yes.

Q. How about a lot of changes in the last six years?

A. Many changes in the last six years.

Q. And since Mr. Horne became superintendent?

A. Mr. Horne since becoming superintendent has made it a mantra for us at the department to do everything we possibly can to provide technical assistance and service to our schools, teachers, principals and superintendents, and that we are doing.

Q. He does pretty well with the legislature, doesn't he?

A. Yes, he does.

Q. Is he getting help from the legislature?

A. I feel he is. We've gotten additional funding for these two big programs over the last two years.

Q. Let's turn to the next page, Dr. Butterfield, please.

Ma'am, we've got a bar chart there?

A. Yes.

Q. Tell us what that tells us, please.

A. This chart breaks down specifically the percentage of Nogales student who were tutored back in

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2005 within the specific AIMS areas of the test that they took and how they did in comparison to the control group, which was Santa Cruz. And the bar

graph clearly shows that Nogales did better than the control group who was not tutored.

Q. Now, when you say Santa Cruz, there's a school district called Santa Cruz and there's a county called Santa Cruz. Which are we talking about?

A. This is the school district.

Q. Is that in the Tucson area?

A. Yes. South of Tucson, I believe.

Q. So if we take Nogales and we look how it's doing and compared to how the Santa Cruz district is doing, which is doing better?

A. Nogales.

Q. What are you doing to try to help Santa Cruz?

A. Making sure that they're applying for funds.

Q. Okay. So the money is there for these tutoring programs, we got to make sure that all our districts are putting their hands in to get some of that money?

A. Correct.

* * *

Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 11, 2007 10:00 a.m.

[COOPER, T-3, 212:10-213:15]

Excerpt from Testimony of Kelt Cooper

* * *

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. . .

Q. Now, I want you to go back to the Hennings affidavit, which is the first page of Exhibit 213, and look at paragraph 4 of that particular affidavit.

A. Yes.

Q. It says, "Attached as Exhibit 2 are statistics showing the current student-teacher ratios for different grade levels within NUSD," and then he specifies the goal, and then he says, the last sentence, "The goals for student-teacher ratios have been met in most schools for most grade levels, as are reflected on Exhibit 2."

Now, was Mr. Hennings' affidavit, which is dated April 2, 2000, was that affidavit correct when

he gave it with regard to his statement that the goals were essentially reached as of March 20, 2002?

A. Yes.

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Q. And what do you attribute that to? What accounted for the dramatic reduction in class sizes?

A. Again, I think both our efforts to identify residential fraud was one. We invested a great deal of internal research to make sure that we -- and came up with systems to try and angulate our data, and we stayed on top of that regularly. And in addition I think the enforcement of the open enrollment policy as it was modified from the existing board-approved policy, not the one that was in practice, had a great deal of influence on the class sizes.

We were able to better predict student enrollment and we were able to reallocate our resources throughout the district once we had a handle on what was going on and control it.

* * *

Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 12, 2007 10:15 a.m.

[COOPER, T-4, 5:10-7:4]

Excerpt from Testimony of Kelt Cooper

* * *

p. 5

. . .

Q. Okay. Let's talk about practice. Did they have some practices -- institutional practices which made difficult the hiring of good teachers?

A. Yes.

Q. All right. Now, did one of those practices have to do with how much credit was afforded teachers moving into the district?

A. Yes.

Q. All right. Why don't you explain that?

A. Not atypical or untypical of other districts in the state of Arizona, Nogales credited years of experience up to five years as a standard, so if a teacher came in from out of state or out of district

with 25 years of experience as a public school teacher they would be typically credited only five and -- from out-of-district credit.

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Now, there was a provision and policy that allowed the superintendent to exercise some discretion on an individual case to award additional credits based on their experience, but typically it was across the board five credits for -- five years of credits for experience outside the district.

Q. Did that affect the pay of a particular teacher if they got five years as opposed to full credit for all their experience?

A. Certainly. The practice itself limits mobility and the opportunity for people to leave districts and seek other opportunities because of the cost differentials. Even if you have a district up the road eight miles and there's a highly qualified teacher you'd like, by that standard you're not likely to recruit them because they could lose thousands of dollars by making the eight-mile move.

Q. Now, was that policy changed?

A. Yes.

Q. And what effect did that have in terms of your ability to hire more qualified teachers?

A. Well, it opened the doors considerably and it had an impact on our recruiting strategies. We were going less and less out to job fairs to recruit. I think word got out that we were giving year-for-year

p. 7

credit, so we had a great number of people coming in and out of retirements up in Tucson and driving all the way down because it was very well

worth the travel time for that type of increase in their salary.

* * *

[COOPER T-4, 18-22]

Excerpt from Testimony of Kelt Cooper

* * *

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. . .

Q. Now, while you were there what did the Nogales Unified School District do to correct this decentralized, unsystematic function that you just described? What happened?

A. Well, recognizing -- and it was a shared. I mean, there were other people in central office that viewed this as not wise practices from a fiscal management standpoint, deposits of money. We wanted to run a very exceptionally tight business office as well, and some of the practices at the site levels were in some ways compromising our ability to make everything squared up.

But regarding to the textbooks, we brought in teams of teachers by content areas grades K through 12 and invited publishers to come in and take a look at

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the various textbooks that could be purchased and had the teachers select their best pick. And we made sure that we said that when they're looking at the textbooks they need to be cognizant of the connections, the -- in the process of examining and

selecting textbooks that they would need to make sure that the content mirrored what the state required as far as the objectives so we would have some connectivity with the standards, some alignment with the standards.

From that point on we basically took the money away from the principals and put it into a common book -- textbook fund, and we organized a system, and I have to give credit to our business manager because she's the one who has to juggle all the pieces. But our objective was to outfit all the students in the elementary schools the first year with brand new textbooks selected by the teachers. The second year would be to fill out the middle schools, and finally to upgrade all the senior -- the high school students on a three-year staggered approach.

Q. Did you, in fact, do that?

A. Yes, we did.

Q. And were these new textbooks that were purchased, were they to your knowledge aligned to the

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state academic standards?

A. As best as you can. Some of the materials, of course, needed to be -- there were some gaps in it. The text in math series, for example, lacks a lot in geometry in the fifth grade area, and that's part of the materials being tested at the state and what they're expected, so in those circumstances when we identified those gaps in the materials with the textbooks, schools were then allowed to purchase supplemental materials that would address those

issues and weave that into their instruction in scope and sequence.

Q. And so if I can just summarize, number one -- in response to the problems that you had, number one, the Nogales Unified School District centralized its textbook purchases; is that correct?

A. Correct.

Q. You put together committees of teachers to select new textbooks that were aligned essentially to the state's academic standards; correct?

A. Correct.

Q. And then you put the Nogales Unified School District on a textbook purchasing adoption cycle, starting with the elementary schools and then the middle schools and then the high schools; correct?

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A. Correct.

Q. Now, were there advantages in terms of economies of scale in centralizing your textbook purchases?

A. Yes.

Q. What were those advantages?

A. Well, there's two things from an academic standpoint, too. Well, we recognize that some of the bigger states in the United States often drive what's found in the textbooks, so it's very important in this process that we -- we're looking at alignment with our standards, not necessarily those of Texas or California. So buying in bulk, you know, you might get some of these salespeople that will say, look, you buy these books, and the principal may buy $32,000 worth of books and they'll promise to come in and do a little brief inservice, but the profit margins for

those salespeople and the publishers are so minimal with those small purchases that they seldom ever own up to their promises of coming in and doing staff development training, going over the books and whatnot.

So when buying in bulk, when you're buying 500, $650,000 worth of textbooks at a given shot, these publishers will send their representatives in.

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They often kick in some additional materials at no cost because you're buying in bulk and it's very worth their while then to do so. So you're getting a lot for your dollar when you're buying in bulk.

But that's an economic one, but more importantly it's a process of alignment so that students have contemporary materials and that they are alike so we can then design our periodic assessments within the school year.

Q. At the time that you left Nogales Unified School District were you aware of any shortage of materials at the schools in the Nogales Unified School District?

A. No. Although we would occasionally get requests from principals, we were still fighting with principals to go out and start collecting the lost book funds, and they don't like to -- they didn't frequently like to confront parents about paying back for a lost book, so there may have been some requests to replace missing textbooks even then.

But as a whole, no, they had books, kids had books, they had classroom sets, and they were standard, and they were contemporary, much different than it was in 2000 and years past.

Appendix I

* * *

[COOPER, T-4, 43-47]

Excerpt from Testimony of Kelt Cooper

* * *

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. . .

Q. Did this include ELL students as well?

A. Yes. All students.

Q. Now, we spoke earlier about methods by which the Nogales Unified School District was able to free up some monies. We talked about economies of scale with regard to textbook purchases, instructional materials, we talked about aides. I now want to talk to you about addendums.

Can you tell the Court what you found with regard to addendums when you first arrived at the Nogales Unified School District? And, well, let's first, what are addendums?

A. Addendums are funds or -- yeah, funds that are available to teachers for doing extra, additional duties or work. For instance, if you sponsor a chess club, there may be some monies associated with sponsoring that club, we would call that an addendum.

Q. All right. When you got to the Nogales Unified School District in August of 2005 what -- what were your findings with regard to these addendums?

A. Well, there were several findings. First we found that there were great disparities on the addendums from each campus. Again, this is an

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artifact of decentralization of decision-making that had been going on for a number of years to the extent that principals had some discretion on what they would want to pay a sponsor for, like, a chess club, say, a chess club fifth grade. On one campus you might have one principal requesting an addendum amount for $250 whereas you might have another fifth grade chess club sponsor at another elementary school being paid $1,000.

So that was an issue, and that was not just an issue that we saw as kind of awkward, but the teacher association also had issues with this, and in our dialogue with meet and confer and the professional relations committee these frequently came up as things that they felt were unequitable or inequitable between campuses, that they felt in certain circumstances that these addendum amounts were tailored towards individuals on the campuses that were in favor with the principal versus those who were not in favor, whatever.

So we spent a lot of time, and it's a continuous process of refining it. So I think we came down to a point where we said you're entitled to have three different addendums here associated with a small list of options that they could use, but they were

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going to be uniform across the board. So maybe one principal didn't want a chess club, but they wanted to have a cheerleading squad, but they were valued at the same amount given the amount of time. We did these algorithms and came up with

some type of matrix to justify equity within these programs.

And also two other artifacts occur. Over time, well, one is just the way you understand principals work. I was there, I did the same thing, which is if you can acquire certain resources one year and can maintain those even though you don't have a need for it, for instance, I have a chess club one year, or a quilting club, and it's valued at $2,000 as an addendum to my campus, and I request that a second year but I no longer have that club, that money is still coming into that campus and the principal knows that that will be money that they can later divert into the areas they want. It becomes their built-in slush fund.

I call it a shell game, and they do that sometimes with personnel as well, they'll make a legitimate claim for a position and then suddenly they'll transfer another person around and then another one around, and all of a sudden that original need goes away and now they have extra resources on

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their campus. Just a shell game.

So we examined all these to find out if, indeed, there were students participating in these programs, which ones had been extinct for 10 years or more and still were getting funded, and we started to eliminate those funds and hone it down and get a grasp on that.

Q. Was there any kind of issue with regard to credit card purchases?

A. Oh, yeah. There's dozens of different means in which resources are bled off of a school district, and, again, I've come from a district that was the fifth poorest in a huge state, and so you needed to account for every single penny. There was no -- there was no fat in the budget whatsoever. You had to know exactly where every mop was and every dustpan was and each one had a value because we were that broke.

And we learned over the years, for instance, if your coaches go out on a scouting expedition for football, say, for instance, that, given a credit card, that they may fill up at the beginning of their road trip on an empty tank, go do their scouting, come back and fill up again on the same credit card, thus getting a full tank of gas.

So these types of practices within a district

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can be better managed. And then we began to say if you're going to use -- you can use a school vehicle and have a school car and you can fill it up with the school credit card because then the gas stays within -- it's our property, it's our resources. If you're using your own vehicle, then, of course, you will be reimbursed on a mileage basis rather than given a credit card and fill it up.

So that way you start to eliminate these little bleeders that occur, and there's dozens and dozens and dozens of bleeders in the school system, you're constantly trying to find and come up with procedures to make that less of a bleed.

Q. So you tightened up your credit card policy. I want to talk to you about -- is that correct?

A. Correct.

Q. Was there an issue when you got there with regard to release days for teachers?

A. Yeah. Yes.

* * *

[COOPER, T-4, 53-54]

Excerpt from Testimony of Kelt Cooper

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. . .

Q. Did the board adopt your recommendation?

A. No.

Q. Why not?

A. There's -- boards operate sometimes along political lines, and it was one of those things that I don't think they wanted to bite the bullet on.

Q. When you were at the Nogales Unified School District did you institute a concept known as zero-based budgeting?

A. In a broad, general sense, yes.

Q. What is meant by zero-based budgeting?

A. It's where you have to justify each and every year what your expenditures are. And I think that most business managers would prefer that type of analysis. Meaning too often you'll find that if the district comes in with a three-percent increase or a two-percent decrease in their revenue one of the easiest methods of budgeting for the subsequent year is just to apply that uniformly across the board.

Q. Was that happening at the Nogales Unified School District?

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A. I think to a large degree it was, but I think there were some serious efforts that were under way to stop that practice, and we began to hold meetings with the principals and ask them to justify their programs by student enrollment, interest, any number of criteria that they would use to justify maintaining a program or a position unless -- just a uniform was add 3 percent to the budget across the board. And it's a much more sensible approach, a zero-based budgeting concept, because it causes people to seriously reflect about what's happening in the schools programmatically, logistically, and make them consider different priorities than just assuming that a three-percent increase is going to be a three percent across the board. It's too easy and doesn't really solve -- a zero-based budgeting approach is a very diagnostic approach and it has a positive effect on budgets but also has an institutional positive effect as well.

[COOPER, T-4, 57-69]

Excerpt from Testimony of Kelt Cooper

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. . .

Q. Now, at the Nogales High School -- at Nogales High School, were there issues in Nogales High School

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with regard to drugs and gangs and things of that nature?

A. Yes. Nogales is a -- you want me to go --

Q. Go ahead, explain.

A. Okay. Nogales is a very interesting border community in that there's a fair amount of wealth compared to a lot of other border communities, and it's cleaner than you'll find in towns such as Laredo, Brownsville, Matamoros, even El Paso and Juarez, I mean, it's an entirely different feel there. The gangs per se are episodic. You can see that, when I first got there, within the first year we began to see graffiti that was reminiscent from my experiences down in the valley. What we call the valley is El Paso, not the valley up in Phoenix. And then you began to see certain characteristics in student dress and behaviors at certain schools.

So you would have episodes of emergence of gang, gang activities, but it wasn't endemic as you would find in Ebantito, Fabens, El Paso, those different areas on the border. But we would have episodes where it was clear that gangs were trying to assert themselves within the schools, junior highs and high schools, especially the high school, and it would manifest itself in behavior of the students, fighting

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in the schools, and we quickly suppressed that and worked on it very quickly because we didn't want it to become completely endemic into the system.

It was one of my greatest concerns because I was so thrilled that in El Paso County you see this

all the time and it's just something you struggle with, and I was praying that we would never have to endure this as a long-term issue, but, yes, on occasion we'd have periods, long periods, perhaps months and months where we'd have to address gang issues and really clamp down on dress, behaviors, kicking kids out of school if necessary to get the message across.

The drugs on the other hand, again, is very endemic. It's in the schools. Everybody will say that they have drugs in all high schools, and I think that's reasonably true. But because our kids tend to dress and behave quite well, they don't look like headbangers and they don't wear fishnets and they don't -- there's a few ghoully looking students and the dress code dress, but by and large they're very handsome, well-dressed young people.

But it's clear that there's an endemic issue with drugs in the schools and it's a serious issue there in the schools.

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Q. Was there ever an undercover operation at the Nogales High School?

A. Yes, there was.

Q. And were there numerous arrests?

A. Yes, there were.

Q. Now, I don't know if you were here when Irene Moreno testified that she went to the Wade Carpenter Middle School and it was in some sort of period of transition. What issues were there at the Wade Carpenter Middle School, if you can explain that to the Court?

A. Wade Carpenter is in an area of town of lower income, subsidized housing. There were issues -- we tried to paint it up, put grass and clean it up, make it look a little better on the outside, but there were some systemic issues, social political aspects, you had some teachers that were -- had their own way of doing things and their own little clique. That was a constant battle between the site administrator and that little group. The SES of the students was much lower than at the other middle school.

THE COURT: The what?

THE WITNESS: Socioeconomic status.

So it was a poorer side of town. And it had its own unique set of challenges, and it was a tough

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School District were the ELL students making progress?

A. Yes.

Q. Was a new principal installed in that school?

A. It's my understanding, but not during my tenure.

Q. Now, at the time that you left the Nogales Unified School District did the Nogales Unified School District to your knowledge essentially solve all of the problems that are discussed in the original *Flores* opinion, namely quality teachers, material shortages, textbook shortages, class size ratios? Were those essentially solved at the time that you left?

A. The schools were cleaner and better organized than they had been before, and I don't remember all the details of the decree, but the

schools were much cleaner, much safer when I left than they were when I got there.

The textbooks, yes, as described, it was a horrible mess and there's some system in place now I think, and the kids have textbooks, and we were able to do that.

Class sizes were down. It took a lot of work and a lot of political finagling there because it was a hot topic, but we were able to reduce class sizes.

As far as quality teachers, you know, it's

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like any school district. We had a really good number of teachers that were very, very sharp and some really good, young, budding administrators as well, so I have to give compliments. I have been in some districts where there was just absolutely administrators that had sludge for brains, and these ones were sharp people, they meant well, they just needed some additional training, and many, many teachers there were very, very sharp.

The issue of hiring teachers that didn't speak English was I think an artifact of a philosophy that emanated from the '80s and '90s in that district, which was to create a well-rounded, bicultural, biliterate student, and it was by design that they were hiring and sponsoring teachers from Mexico to teach in the schools who didn't speak English because that wasn't the priority.

It was an issue when I got there, and so we reduced that, I think we had maybe three, and I believe that was a fight because our human resource director didn't then want to sponsor it because of the paperwork related to sponsoring people from another

country has gotten so tough. But we had two or three that spoke English well and had good technical backgrounds and content areas that we continued to,

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sponsor and keep, but by and large if they didn't speak English and they couldn't write a paragraph and they couldn't communicate well enough, we wanted quality teachers and we did away from that practice. But I will -- I want to say that at least everybody still has a need to select the best teachers possible, and I would say that you have to stay on top of it, and when you get new teachers in that are not cutting it you get rid of them right away and try to keep on bringing in the best and maintaining the best.

So I would say that it's a whole lot better than it was. It's no different than any other district in the United States trying to get some of the best teachers possible. Everybody is dealing with that one.

Q. At the time that you left in the schools such as Vasquez De Coronado, Challenger, Bracker, were you generally happy with the quality of your teachers at the Nogales Unified School District at the time that you left?

A. All schools?

Q. All schools.

A. I was happy to know that we made some significant improvement to the schools. When I left I was pleased, I felt that I did a good job, that I was

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part of a group that did some pretty neat things there. I was -- I left there with some sincerely beautiful feelings toward people in our programs. We

saw some programs really take off and do great. I've since seen some principals at conferences that have developed into some topnotch speakers, and I'm proud. It's like being a dad seeing your kids graduate. You see some really cool things going on, and I was pleased.

Was it a perfect district? I think all districts need improvement, and it's usually time for someone to step in and try to take it to the next level. But I was pleased, very exceptionally pleased with the people we worked with and how we were able to get systems to start functioning together. Because that's -- it's like hearing a well-tuned vehicle, and it just felt like it was getting there and it was moving and we saw some of the product.

So when I left I would say there was still -- it's a hundred million things that I can dream up and say I still want to do this and do that, but when I left I left with my chin high, knowing we did a very, very good job, and was very pleased that the quality of education was better for those kids than it was when I got there. So it was much better when I left

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than when I got there.

Q. Towards the end of your tenure did anyone of the Nogales Unified School District ever come to you and say, "The ELL programs don't have enough money"?

A. No.

Q. You indicated in your deposition that more money will not make the difference for students, or ELL students unless there are structural changes in

the way schools are operated. What do you mean by that?

A. Well, if you continue to do what you do as you've done it, I don't think there's any way you can expect anything but the same outcomes. You can infuse the system with additional funds, but as long as there's bleeders and when there's incompetence or there's disconnection between systems within your organization, if things are not tightly aligned, if you're not -- if you don't have a supportive board, for example, in some of the efforts that you do --

And it's not just the policy aspect of them approving a policy, it's standing by and supporting the efforts and understanding that some of the benefits of your work are not going to show for a year or two or three, that they have to have faith and these kind of things need to be in place because money

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is not necessarily the answer. In fact, in most cases it's a matter of management, it's a matter of getting the social dynamics in the right alignment as well.

I don't -- it's like there's this parasite in the school systems that drain away resources from the student body, and that includes inefficiency, ineffectiveness, ineptness, politics, political hierarchies and prioritizations of funds rather than those things focused in on the student, philosophies that contradict good common sense, such as hiring teachers that don't speak any English simply because there's some greater bicultural issue going

on, and the kids aren't getting to learn English, it's compromising that whole thing.

All of these things you can find in any and every single district, which are just parasitic and draining away the resources of bringing a focus in. Until they get these things shored up it doesn't matter how much money you put in, those resources are drained off and don't do any good for the student. You need to clean up the organization and make sure it's highly managed and highly efficient to even begin to suggest that money might make a difference because good money after bad is still money tossed away.

Q. At the time that you left the Nogales Unified

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School District were the ELL students making progress?

A. Yes.

Q. Were they learning English?

A. Yes.

Q. Were many of them meeting the AIMS requirements?

A. Yes.

Q. We hear a good deal about what the state should do and what the school districts should do. Do parents and students also have responsibilities with regard to the education of students?

A. Yes.

Q. And what are those responsibilities?

A. Oh, they're innumerable, but I'll give you an example as it applies to Nogales.

Principals were concerned about the number of students that were absent in school. Again, I come from a tradition where after three or five absences

the parents can be held responsible and in contempt of court and fined, and I've sat in a lot of those before the magistrates where they'd actually fine parents for kids not coming to school. In Nogales there are instances where students were missing in the first semester 40 and 50 days, complete days of attendance in the elementary schools.

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Responsibility of a parent is to make sure, especially at the primary grades, elementary, to get those kids to school. Get them to the bus. Get them to the school. Don't just hold them out because it's a little drizzly or a little bit of snow and keeping them at home. We began to work closely with the County Attorney, Marty Chase at the time, and it was hard work. For some reason there was some resistance to start sticking it to the parents that were allowing this to happen. But before I left we were just finally getting a system in place that identified the parents, and we were to work through the juvenile probation office and the magistrates to start getting the parents held responsible for their kids to be in school. That's one.

As long -- and that's a pervasive deal down there. That's a parent issue and it's trying to work with law enforcements and the courts to make sure that there's some teeth in there to get those parents to do it because otherwise we're fighting a desperate situation when it comes just simply with attendance in the elementary schools.

Now, we got the support of the courts, they said get us to this point and we'll do it. So I don't know, that took several years just to get the dialogue

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and get the word out that we were going to stick it to the parents if they didn't get their kids there. We saw some, but the mechanism never was fully implemented. But that would be an issue where parents need to be responsible. Parents need to make sure the kids are not hiding stuff under their beds, the kids are not lying that they're doing their homework, they're accessing -- we went to an automated system where parents can have access to their students' attendance and grades through our Power School Program, and if they don't have any Internet they can go to the local library and access it through there. We give them a pin number. It's very common anymore and parents need to be responsible for getting into it.

Q. And do students themselves also need to be motivated and read their lessons and do their homework?

A. Yeah. That's standard. That's 1920 on. I mean, you have to work with kids and their parents and have high expectations and hold people responsible and accountable.

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[COOPER, T-4, 78-79]

Excerpt from Testimony of Kelt Cooper

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Q. So what did you do about that?

A. Well, we came up with an assessment department, began to pull up all the data that we could, getting it organized. We later brought in different folks from the school district, created a research and development department instead of a bilingual department to oversee the security distribution and data input of our scores. And we were -- and I don't know if it's still in place or if it was fully activated, we were looking at a data warehouse system that we would collect our SAIS data, every piece of data that we could on any individual students into a common template that we could then look at and do research with or, you know, do some studies and analysis with. So we were in the process, and it's an ongoing process, of making sure that there's a system of getting not only the data out but the data back,

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and because there are different measurements to come into a system, a warehouse system, an electronic warehouse system that we can access it and slice and dice the numbers as we need to. So that was a work in progress. And I was seriously disappointed with a district that size not having at least some semblance of data management when I got in because it's a fairly decent-sized district.

Q. So by what year do you -- did you think that you had gotten the data problems resolved such that, for example, if the system identified a student as an English language learner you could be confident that student was actually an English language learner?

A. Probably around 2003. And I think part of that was in assistance with Proposition 203, or I

think it was 203 when we began to start doing annual assessments for all students in the ELL programs, even if they'd been exited, because up to that point I wasn't even confident that anybody had done any kind of reassessments. In fact, I recall finding when we started digging in there were some students that hadn't been reassessed in probably four or five, six years, and I'd seen that in other districts, too, because it's just sloppy data management and clerical work.

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Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 10, 2007 9:17 a.m.

[FAGAN, T-2, 185:3-186:23]

Excerpt from Testimony of Thomas W. Fagan

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Q. So what HB 2064 requires is that in determining the amount of state aid you offset the federal funds as specified in the legislation; is that right?

A. It requires that the state aid amount be offset by these federal dollars.

Q. Now, if legislation like HB 2064 had been presented to you while you were with the U.S. Department of Education, would that have raised any concerns?

A. Oh, boy. Certainly would have, because this seems to be on its face inconsistent with federal law regarding both supplement, not supplant and the

provision that governs the state aid and taking into account federal dollars when determining the amounts of it for a district.

Q. Does the fact that the statute, as compared to the preexisting situation, increases group B weights make any difference in terms of that analysis?

A. No.

Q. Does the fact that the state might end up giving more money on top of the group B weights make any difference in terms of that analysis?

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A. No, because you're still dealing with the offset and taking into account the amount of state aid a district will receive based upon the amount of federal dollars it has.

Q. Now, Mr. Fagan, it has been suggested I believe perhaps at your deposition as well that if the use of federal dollars is restricted in the way that you have just suggested, then what we end up is gold-plating Arizona's programs because we would so drastically reduce the use of federal funds. What's your response to that?

A. Well, I don't believe we're talking about gold-plating here, but if the state is convinced that that is, indeed, the case, then they can return the money to the federal government and it will go to states that are in need of it.

Q. Mr. Fagan, during your 29 years at the U.S. Department of Education and all the time that you were involved in handling Title I policy and making determinations regarding supplement, not supplant restrictions, did you ever see anything like HB 2064?

A. I've never seen such a blatant violation of the law.

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Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 17, 2007 9:44 a.m.

[GARCIA-DUGAN, T-5, 103-114]

Excerpt from Testimony of Margaret Garcia-Dugan

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Q. When did you obtain your master's degree?

A. I believe I received my master's in 1977.

Q. And what was that area?

A. Secondary education.

Q. Have you been a teacher?

A. Yes, I have.

Q. When was your first teaching job?

A. My first teaching job was in the Murphy Elementary School District. I was an 8th-grade teacher that taught all subjects. That was for one year.

Q. And what year was that?

A. That was the year -- 1973-74 school year.

Q. After teaching 8th grade in the Murphy Elementary School District where did you teach?

A. I left the Murphy Elementary School District after the '73-74 school year and acquired a job in the Glendale Union High School District at Glendale High School.

Q. And for what period were you a teacher in the Glendale Union High School District?

A. I was an English teacher, speech teacher, and

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variety of other courses I taught for 13 years.

Q. From 1974 to 1986?

A. Yes, sir.

Q. During that 13-year period did you teach ELL students?

A. Yes, I did. I began teaching English language learners around 1976, I believe.

Q. And during this 13-year period that you taught at Glendale High School can you give us some sort of idea about the demographics of the school?

A. Glendale High School is situated in downtown Glendale. It is the mother school of the Glendale district, which is comprised of nine schools. It has the lowest socioeconomic groups of children. Mainly their demographics are -- it's now what they call minority majority school. When I was a teacher at Glendale we had more Hispanics than any other school in the district. At that time we probably had close to 40 percent Hispanics, 60 percent other, and then later it's now become basically I believe 70 percent minority with about 65 percent Hispanic.

Q. During the years that you taught there did you have a transient population?

A. Yes. Glendale has always been known to have students that come in and leave. It's, like I said,

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the lowest socioeconomics, and that usually happens in those type of schools.

Q. Now, you indicated that it is low socioeconomically, so I take it that you had -- it was a Title I school?

A. Yes, it was.

Q. In 1986 did you acquire a new position with the Glendale Union High School District?

A. Yes. In 1986 I transferred to Washington High School as a staff developer. My job was to train teachers how to teach.

Q. When you say to train teachers how to teach, how to teach English language learners?

A. Not specifically that. At the time around 1986 there was a big movement that schools needed to have what they call staff developers to train their teachers, new teachers coming in, just to better their skills and instructional delivery, and I was asked to apply for the job. I did.

At that same time that I left to Washington High School the entire English language program moved to Washington High School, so I think that was a combination of the reason I was sent to Washington High School.

Q. And how long did you have that position?

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A. I had that position for three years.

Q. What were the demographics like at Washington High School?

A. When I arrived at Washington High School, as I said, they moved the entire English language learner program from the other schools onto that campus. That became the center for all of the English language learner instruction. The demographics definitely changed when that population came on to that campus.

I would say before the English language learners came to Washington it was probably maybe 15, 20 percent, 30 percent minority and the rest it was Anglo students.

Q. And then after the change was made, it dramatically increased from that?

A. It dramatically increased, and all I remember is that we had 44 different languages at Washington High School when I transferred over.

Q. How many? I'm sorry.

A. About 44.

Q. What was the predominant language that was spoken?

A. It was predominantly Spanish, Vietnamese being the second.

Q. Now, during the -- now, you said you were at the Washington High School for three years?

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A. As a staff developer, and then I moved into an assistant principal of curriculum instruction for another three years.

Q. And what were your duties in that position?

A. My duties at that time really was to be an instructional leader in the sense of making sure that

the teachers were teaching the curriculum aligned to the assessment. Glendale Union High School District has always had a defined curriculum that teachers are supposed to teach to, and there's a districtwide assessment, and I was very familiar with that process, and so that's what I did, was mainly help teachers better their instruction. I built the master schedule in which we placed students in classrooms. I did evaluations of teachers and sponsoring of extracurricular activities at nighttime.

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AFTERNOON SESSION

THE COURT: You may proceed.

BY MR. BISTROW:

Q. Margaret, now, in 1992 were you appointed to a new position in the Glendale Union Unified School District?

A. Yes, I was.

Q. What position was that?

A. I became the principal of Glendale High School.

Q. How long were you the principal?

A. Ten years.

Q. What were your duties as principal?

A. Everything. High school principal is responsible for really managing the high school, the budget, making sure that the teachers are evaluated according to law, making sure that the teachers are teaching the academic standards that are set forth by the state, then any other duties that the superintendent gave me.

THE COURT: Can I ask you a question real quick?

THE WITNESS: Yes, sir.

THE COURT: How does the principal make sure that teachers are teaching to standards?

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THE WITNESS: The way that I made sure that our teachers were teaching to the standards is I looked at their scores on our districtwide tests, which was aligned to the state test, and I also observed teachers in the classroom, and I would have my observation notebook with me and I would identify the objective they were teaching and make sure that it was aligned to the outcomes that the state -- the state standards.

THE COURT: All right. Thank you.

BY MR. BISTROW:

Q. Margaret, I want you to turn to Exhibit 239. And is this an abbreviated summary of your resume?

A. Yes, it is.

Q. And I notice under Honors and Awards, maybe this is your number-one honor, Softball Coach of the Year for Skyline Division for 1977?

A. That is the award I'm most proud of.

Q. There's a award called Achievement Above All Award, Glendale High School, 1985. What did that award entail?

A. I believe -- well, the award I think started in 1984 in the district, and it was an award that was given to the top teacher of each of the high schools in Glendale, and each teacher from each of the nine

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schools was awarded or presented to the governing board during that year, and I was awarded the achievement above all.

Q. You mentioned under Honors and Awards that you were highlighted -- that you personally have been highlighted in three published books. Can you explain to the Court how you have been highlighted in these three published books?

A. The first book, Structured English Immersion by Johanna Haver, she has written a book regarding the structured English immersion and asked me several questions regarding structured English immersion.

The next one was a book written by Rosalia, who also testified, and there was a chapter in which Glendale High School and Thunderbird High School in the Glendale Union High School District was highlighted regarding English immersion.

And then the next one by Elaine McEwan, the Ten Traits of Highly Effective Principals, she chose principals throughout the nation. I've never met her personally, but she called me and asked me several questions regarding how I made sure that teachers were teaching the standards, how I made sure that there was discipline in the schools, and several other questions regarding how a principal is effective.

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Q. And you were highlighted in her book?

A. Yes, sir.

Q. As an effective principal?

A. Yes, sir.

Q. Now, 2002 did you acquire a position in the central office of the Glendale Union High School District?

A. Yes, I did.

Q. What was that position?

A. I was the administrator for curriculum and instruction.

Q. And what were those duties?

A. Those duties were to make sure that the districtwide test that was given to each -- that -- we had several tests that were aligned to the academic standards. For example, all of the English courses in the Glendale Union High school, math courses, science courses and so on, all of the schools administered these tests to our students in the Glendale Union High School District, and I was in charge to make sure that that testing went as prescribed with security, with grading and with results to the principals to allow the principals to know how well their schools were performing.

Q. I think you said there were nine schools in

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Glendale Union High School District?

A. Nine traditional high schools and then we have an alternative high school for students who have difficulties with the normal, traditional schedule, and it's called Metro Academy.

Q. What is the approximate school population of Glendale Union High School District?

A. It's kind of interesting, I just saw that this morning in the newspaper. Right now they have about 14,500.

Q. And you were the administrator for curriculum and instruction for how long?

A. A year.

Q. June 2002 to June 2003?

A. Yes, sir.

Q. In June 2003 did you take a position with the Arizona Department of Education?

A. Yes, I did.

Q. And were you doing some work for the Department of Education even prior to June of 2003?

A. Yes. I was asked by Superintendent Horne if I would come down to work as an associate for him. At that time it was in the middle of the school year, January of 2003, so the district allowed me to work part-time for them and part-time for Superintendent

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Horne as an advisor. I needed to complete my contract with the Glendale Union High School District, and so they allowed me just to do part-time work.

Q. Now, what position did you assume in June of 2003?

A. I assumed the position of the Associate Superintendent for Academic Achievement, which really supervised all of No Child Left Behind.

Q. And why did you take the position at the Department of Education? Why did you leave Glendale where you had spent your entire career and go to the Department of Education?

A. I decided to change my career at that time to go to the department mainly because of the English language learner, the law that had gone -- had been voted in the year 2000, Proposition 203. It had not

really been implemented to my satisfaction, and Superintendent Horne asked me to come down to make sure that we would put forth Proposition 203, the law, and to make sure that our students were given structured English immersion, the English language learners that is.

So that was the -- that was the number-one reason that I decided to go.

Q. I want to take you back to your years as an

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English teacher at the Glendale High School from 1974 to 1986. Did you teach ELL students during those years?

A. I believe I started teaching the English language learners around 1976, '77. And I taught them until about 1984, '85, I believe.

Q. And then they went to Washington High School; correct?

A. Yes.

Q. Now, did you also teach -- while at Glendale High School during these years did you also teach regular English-speaking students?

A. Yes. My assignment when I had English language learners, I taught them one period a day, one hour a day, and then the rest of my teaching assignment I taught regular English, which was either English 1, 2, which is considered freshman English, or other courses that were given to me to teach.

Appendix I

* * *

[GARCIA-DUGAN, T-5, 130-135:2]

Excerpt from Testimony of Margaret Garcia-Dugan

* * *

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. . .

Q. Did you have the research division of the Department of Education gather some data on how well students who were classified as English language learners in 2003 performed on the AIMS tests in 2005?

A. Yes, I did.

Q. When did you have this study done?

A. I believe it was in the spring of 2005.

Q. Why did you have the study done?

A. Maybe it was 2006. I'm trying to remember, was it last year?

Q. It was 2005.

A. 2005. Why did I have the study done?

Q. Yes.

A. Well, there was always questions to us: How are the ELL students doing? Are they doing okay?

There was some people out there say they weren't doing well because of structured English immersion, we still have the politics out there, the two factions, that bilingual education is a better way to instruct English language learners. So I've been given these questions since I've come to the Department of Ed.

So we ran the study. We decided what's the best way to figure out how our ELL kids are doing.

And so being that we had gotten at the department about 2003 -- and I felt this is really the first year

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that Proposition 203 was at least somewhat implemented, and I think now that it's become fully implemented as much as I think it needs to be, or should be.

But in 2003 we knew we were getting some inroads within putting through Prop 203, so I had the research and evaluation department find -- you know, put a study together and let's look at students who were ELL in 2003 and match those students to their scores of the AIMS test in 2005, and then let's rank them, let's find out what school is doing the best and let's go and find out why they're doing the best. So this is what came from that study.

Q. Exhibit 216 is the result of that particular study?

A. Yes. Each of these schools had to have at least 100 AIMS tests in order to qualify. I didn't want to put a school in there that only had three ELL kids because it wouldn't really give us the robust study I wanted. So I said we needed to at least have a hundred tests so we can at least make some determination.

Q. Now, I want you to go to Exhibit 216. And on the far left-hand corner of that exhibit you have a school code?

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A. Yes.

Q. You see that? What is a school code?

A. Every school has a school code in the state, and that lets us know what district they belong to.

Q. Then you have, of course, the school name is the next column?

A. Yes.

Q. And then you have number, and that is the number that refers to the number of tests?

A. Yes. Every student is given three tests, one in reading, one in writing, one in math, so that would be about a hundred kids.

Q. Okay. Then you have a percent pass '05?

A. Yes. What we did, we matched the students that we identified in 2007 as being English language learners, and then I wanted to make sure that they were still around in 2005 so I could see how well they had done on the AIMS test in 2005.

Q. So when you say percent pass in '05, for example, Gallego Basic Elementary School, 83.94 percent, which is according -- well, before we go into that, you have ranking?

A. Yes. They were the number-one school in the state.

Q. Then when we say percent pass '05, is that

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the percent who passed all three AIMS tests?

A. Yes, sir.

Q. Now, you'll notice that in the top ten schools you have four schools from Nogales, and can you read those, read off the names of those schools?

A. Vasquez De Coronado Francisco School, Robert Bracker Elementary, Lincoln Elementary, and Challenger Elementary.

Q. When you saw that there were four schools from Nogales Unified School District, did this provide you with some -- was this significant to you?

A. Yes, it was.

Q. And why was that?

A. Well, it was an isolated school. I mean, there were four schools from one district, and that was the only district that had so many schools, and I thought that to me says there's systemic things going on at Nogales Unified. When you have four schools in the top 10, you need to really look to see why that's happening, and to me it was exciting, I know that the Flores came from Nogales, I had heard that Nogales was doing well, I, you know, had nothing to base it on until I ran this study and then it pops out.

So I was very excited to see that we had one district that was really shining because we were

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trying to find some school districts in Arizona that we could find out what their best practices were so we could share those with other districts, and Nogales came out.

Q. Now, in terms of the average pass rate in the state of Arizona for all students, what is that average pass rate for all three AIMS?

A. Approximately 66 percent.

Q. And you had one school from Nogales, Vasquez De Coronado, which was at 77.86 percent?

A. Yes, sir.

Q. Now, through the course of testimony that's been elicited to date, and you've been sitting here in the courtroom, we have gone through numerous exhibits documenting how well ELL students have

been performing on AIMS tests, we've had discussions on norm reference tests and things of that nature, and you've reviewed many of these documents as well; is that correct?

A. Yes, sir.

Q. What conclusions do you draw from all of this data that's been before the Court in terms of how ELL students are doing in the Nogales Unified School District?

A. From all the data that I have reviewed on Nogales, I would say Nogales Unified School District

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is doing an exemplary job with their English language learners.

[GARCIA-DUGAN, T-5, 137:12-20]

Excerpt from Testimony of Margaret Garcia-Dugan

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. . .

Q. In your view has the State of Arizona taken gigantic steps to provide an appropriate English acquisition program for Arizona's ELL students?

A. I think we have provided a phenomenal infrastructure for districts to then take it, and within their competent teacher staff and their administration there's no reason why our English language learners are not learning English as quickly as possible.

* * *

Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 9, 2007 9:58 a.m.

[MORENO, T-1, 12-15]

Excerpt from Testimony of Irene Moreno

* * *

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. . .

Q. Did you deal with English language learners?

A. Oh, yes. Not as many as once I left the little community, but, yes, we definitely dealt with English language learners.

Q. And what was your job after that? What job did you have after?

A. I got married and came -- moved to Glendale, and I was the reading specialist. I got hired in Glendale El, Glendale Elementary. I was a reading specialist there for a while because of my reading endorsement.

Q. During what period of time were you at the Glendale Elementary?

A. My gosh. From '77 until I left in 2001.

Q. And did you have various jobs while you were at Glendale Elementary?

A. I did. I did a first grade combination. I taught third grade as well, fourth grade, sixth grade. Seventh and eighth grade is where I finally finished. Oh, I did some Title I -- what do we call ourselves? It was the Title I coordinator type thing. We worked with students that were at risk. So

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I did that for a couple of years.

Q. And after you left Glendale Elementary where did you go?

A. Washington Elementary.

Q. And how long were you at Washington Elementary, from 2001 until when?

A. 2003.

Q. And then you took your -- essentially your current job --

A. Yes.

Q. -- at the Department of Education?

A. That's correct.

Q. What was your job title and your duties at the Washington Elementary School District?

A. I was a program specialist, and the work entailed professional development for teachers. I did some assessment in both languages at different sites, helped teachers with support for those particular second language learners.

Q. During the period of time that you worked in the Glendale Elementary School District did you teach ELL students?

A. Yes, sir, I did.

Q. When we say "ELL," that's English language learners; is that correct?

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A. That is correct.

Q. Is that the same thing as an LEP student?

A. Yes, it would be. Limited English proficient student, yes.

Q. That's the old term that we use, ELL; correct?

A. I believe that it's still reported as LEP in some of our federal reports, so --

Q. But ELL and LEP are one and the same thing?

A. Yes, sir.

Q. Over the years how many ELL students have you worked with?

A. Hundreds.

Q. What generally was the native language of these students?

A. Generally it was Spanish.

Q. Did you deal with other languages as well?

A. That came later. The languages, oh, I guess it must have been in the last 10 to 12 years. We had Bosnian kids, we had kids that were from Russia, we had Vietnamese, Korean, Chinese, Tagalog is a language of the kids from the Philippines, Arabic. Oh, gosh. Farsi was another one that we dealt with. So my Spanish wasn't of any value for those students.

Q. When you were at Glendale Elementary, the

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Glendale Elementary School District, why don't you describe for us how you worked with ELL

students so that they could become English-proficient?

A. Initiall[illegible] was a bilingual program that we were in, which was -- I was in that I would say for about five years. Because the program didn't have any curriculum per se, it was wholistic, I made a switch, I decided not to stay in those programs, so we moved into a regular, what we call an ESL, which is English as a second language, which essentially wasn't too much different than the bilingual programs. After you do that for a while and work with these kids and you're realizing that they're not accomplishing what you really feel they need to, I made a change and I decided that these students needed to be taught the way other students were taught. Particular strategies that assisted in that would have been the graphic organizers, the small group type tutoring that went on. I did a lot of chants so that the language was heard regularly, a lot of manipulatives. Anything that was real visual that I would have used with my regular ed students that were struggling.

[MORENO, T-1, 18-20]

Excerpt from Testimony of Irene Moreno

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. . .

Q. And when you have transient schools, does that pose particular problems for an ELL learning program?

A. It does.

Q. Why is that?

A. Well, you lose the consistency, the students don't get -- again, the consistency. When they're moving and -- well, they don't get the consistency, I'm going to leave it at that.

Q. Now, do you consider yourself to be an expert in how to provide effective services in order to teach ELL students to become English-proficient and academically proficient?

A. I do.

Q. And this is based on your many years of experience?

A. It is, and being a second language learner myself.

Q. After 27 years of teaching English language learner students do you have an opinion as to the most effective strategies to use in educating English language students to become English-proficient?

A. I do.

Q. And what are those strategies?

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A. Structured English immersion I have found to be the most effective, and I believe that you see that nationwide with businesses, the Fire Department, immersion really is the route to go. You don't teach a student to become a proficient basketball player and not use the basketball. The same way with a pianist.

So in order to make them proficient in the language you use English.

Q. And do you feel the same way in terms of -- you mentioned you also are an expert in making ELL

students academically proficient. What strategies do you believe are the best strategies to use to make English language learners academically proficient?

A. Again, it's best practices, it's good teaching. If you're a good teacher, you're going to work at getting whatever student it is, whether it's a limited English speaker or a student that's limited in any academic area. Particular strategies are those that I've already kind of mentioned. The graphic organizers for one, it's just visual. Even if they don't understand something, they at least get a really good gist of what is going on in the classroom.

When you hear the language consistently, unless you live under a rock, there's no possible way that you wouldn't be able to glean some of that

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particular information.

When I did the professional development I very often told them, "I'm not giving you anything new, it's practices that you already have, we just need to dust them off and pull them out of our little bags and start using them."

The students really acquire the language and content-area academics the way other students do.

Q. Now, when you taught ELL students in the Glendale Elementary School District, were the ELL students segregated in their own classrooms or were they mixed with regular English-speaking students?

A. Again, depending on the site, if you were at a particular site they were -- you didn't have a choice, you didn't have a real mix of those particular students. One in particular was right in the barrio, so you had very few other students other than your

Spanish speakers, so there was some segregation. The district moved to make magnet schools so that they could be mixed, but again, it varied from site to site.

[MORENO, T-1, 33-37]

Excerpt from Testimony of Irene Moreno

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. . .

Q. And when you started at the department in April of 2003, can you describe the size and the quality of your staff?

A. There were six of us, including myself. One admin, one program project specialist and three education specialists. Only two of those education specialists actually had education background.

Q. When you came on board in April of 2003 were there some time-on-task issues within the English Acquisition Services department?

A. Yes, they were. The program specialists would go out monitoring, and when they came back the following day was supposed to be time off because they were out of the office doing particular monitoring, so that was an issue. They did that for a while because I was told that that was policy, if they were out of the office for a day then they took the next day off.

Q. Right. And did you change that policy?

A. Yes. I did get smart eventually.

Q. And what happened to the staff?

A. They all left.

Q. Now, over the years has your staff expanded?

A. Yes, it has.

Q. How many are in the English Acquisition Services department today?

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A. There are 16 of us, including myself.

Q. And have the duties of the English Acquisition Services department also expanded?

A. Yes, they have.

Q. In what way?

A. On top of additional monitoring that we're doing there is things that we had to develop. There were no proficiency standards in place. There's assessment pieces we have to do. There's technical assistance that we offer. There's professional development. We put on several conferences in the time that we were -- that I've been there, and we also have developed an endorsement. Of course, there are requirements, but that has definitely increased as far as the workload.

Q. Is the -- would you say that the English Acquisition Services department is a strong and effective department within the Department of Education, the State of Arizona today?

A. I would say yes.

Q. And do they work hard and long hours?

A. Yes. Very hard and very long hours.

Q. Now, you're aware that a new bill, House Bill 2064, passed into law in March of 2006; is that correct?

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A. Was it March? Yes.

Q. And were monies appropriated under that bill so you could further expand the staff of the English Acquisition Services department?

A. Yes, they were.

Q. Do you recall how much money that was, approximately?

A. I don't. I know that they've asked for 20 additional staff because we're looking at not only monitoring but actually evaluating and school improvement, and we want to be able to offer the technical assistance in order to get there.

Q. Are you currently advertising for additional staff?

A. Yes, sir, we are.

Q. And to fill approximately you said 20 additional positions?

A. We've filled some of those already, but 20 additional is what the bill stated.

Q. I think you've already mentioned this, but since you have come to the department in April of 2003 -- and I'm going to call it the English Acquisition Services department, EAS for short -- has EAS undertaken a series of initiatives to improve statewide the delivery of services to English language

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learner students since you arrived in April of 2003?

A. Yes, we have.

Q. And I want to go through some of these initiatives with you if I may.

A. Okay.

Q. First I want you to turn to Exhibit 202 in your book.

THE COURT: You said Exhibit 202?

MR. BISTROW: Exhibit 202, Your Honor.

THE COURT: Is yours in color?

THE WITNESS: It is.

THE COURT: So is mine.

BY MR. BISTROW:

Q. Now, this is a fairly thick document. Can you tell us what Exhibit 202 is?

A. 202 is our English Language Proficiency Standards. We were required by the federal government to have proficiency standards that were aligned and linked to our language arts academic standards, and that's what you have before you.

Q. Now, prior to the year 2000 did any such standards exist in the State of Arizona?

A. No, they did not.

Q. Prior to the year 2000 did school districts and charter schools in the State of Arizona create

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their own English language proficiency standards, assuming they even had them?

A. Because of the time involved, I would think that they probably didn't. They would go with whatever curriculum was in place in their schools. Our purpose was to facilitate their instruction, give them some guidance so that they would have an idea of where those students are proficiently in the language.

Q. Now, I want to be clear. When you speak of English proficiency standards, what do you mean?

A. Our standards cover K through 12, so you've got ELL I, II, III, IV and V. The standards tell you where the students are in their language, in their proficiency. You've got your beginning students or beginning area in all of the levels. ELL I is the kinder, ELL II is 1, 2 and 3 for second and third grades, and then ELL III comprises of 4, 5 and 6, and then IV is 7, 8, and then the last one is 9 through 12.

Each one of those levels gives you a proficiency of where those students are as far as their reading, their writing and their oral language.

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[MORENO, T-1, 41-51]

Excerpt from Testimony of Irene Moreno

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Q. Now, do these proficiency standards from the point of view of the director of EAS serve important, broad purposes in the State of Arizona?

A. Yes.

Q. What are some of the purposes that these standards serve?

A. Well, it will allow those students to become proficient quicker and they would be able to exit the program itself. They would be proficient on that particular assessment.

Again, it's guidance for those teachers as a whole to be able to develop a curriculum and work around it. It also gives them benchmarks. It allows them to look at where the student is in order to be

able to, again, move them along, write the curriculum.

Q. Does this -- do these standards impact the curricula of school districts and charter schools?

A. I don't know that they necessarily impact it as much as they help guide it. The whole purpose of them is to give them guidance. It was something that wasn't there, it was a consistency that was missing, so now the teachers have something to look at, they

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have a way to move through programs in order to get these students where they need to be.

Q. So essentially they now can have standards from which they can develop curricula to meet the standards?

A. Yes.

Q. Now, are these proficiency standards correlated to Arizona's language arts academic standards?

A. They're actually aligned and linked to the language arts standards. That was a requirement.

Q. Can you explain that?

A. Those last two levels that we talked about, the early advanced and advanced --

Q. You're talking about level IV and level V?

A. Actually, you're looking at ELL I and you're moving across the way there, so you've got beginning, early intermediate, intermediate, early advanced and advanced. The last two columns are actually our academic standards already, so that's the linkage. We looked at the standards in order to

be able to write these so that there would not be a gap, so that everything kind of tied together.

Q. All right. So when you master the last two columns in each one of these standards, those last two

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standards are aligned to your academic standards in the language arts standards for the State of Arizona?

A. Yes, they are.

Q. Now, how did you go about developing these standards?

A. Again, our window was very short because they hadn't been done, so the federal government expected a finished product in a very short time frame, so we had the core developed by Susan Penatel (ph.), who was nationally known and had worked through our Arizona state standards. She gave us the core and then we went out and did, oh, my goodness, I believe it was nine focus groups all over the state, and in those nine focus groups we had 10 or 11 districts meet and we talked about them, we got input, we made some changes, and then once we came -- put those together we went out a second time and -- with those same schools, and that's how those were -- those came about. So it took almost a year's time, I guess, to finally get what we needed.

Q. And, as I understand it, these standards were approved by the Board of Education sometime in 2004; is that correct?

A. That is correct.

Q. So the standards have only been in place now

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for a couple of years?

A. Yes, that's right.

Q. Do you believe that these standards that have now been disseminated throughout the state to be critical in the delivery of instruction to ELL students?

A. Yes, sir, I do.

Q. Can you tell us why?

A. I feel like I'm repeating myself. Again, the guidance that it gives teachers, that consistency. There was no consistency for teachers. I know I would have loved to have had something like this in the classroom to be able to look at and know exactly where my students were. We spent a lot of time and energy differentiating your instruction in order to get students where they need to get.

This is a great assistance because, again, it gives you a benchmark, gives you somewhere or somehow to develop your curriculum. It's consistent statewide so if there is some mobility you know that that's going to be consistent when you come in.

Am I making sense?

Q. So if you have transient students, for example, who move frequently from one school to the other, they'll be dealing with the same standards?

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A. Absolutely.

Q. Do the standards also -- do they also provide a gauge by which the department can provide oversight and assure that ELL students are receiving instruction in order to meet those standards?

A. I think the gauge is more through the professional development and having them actually understand their purpose. Because they have not been in place long enough for us to be able to do that, I would hope with time that that would be the case. We spent a lot of time with professional development, explaining how these work, tie them into lesson plans and things of that nature so that teachers don't struggle, so that there's a comfort level that's entirely different than what we've been -- what we faced before.

Q. In your opinion were the creation of these standards a substantial advancement over what was in place prior to 2000?

A. I would say yes, because there was nothing in place.

Q. Kind of like going from zero to 10?

A. That's right.

Q. I want you to go to Exhibit 203, if you will, and which is a two-page document. And I want to go

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through that document with you, if I may.

A. Okay.

Q. First of all, with regard to the first page of this document, what is this document, the first page?

A. On the Exhibit 203 that we're looking at?

Q. Yes.

A. It is a correlation chart that we developed to share with our constituents. Teachers wanted to know where our assessment was aligned to our standards, so that's --

Q. When you say "standards," you're talking about your --

A. Proficiency standards.

Q. Okay. Now, when you talk about assessment, what are you talking about?

A. In this particular chart it's our proficiency assessment, which was the Stanford English Language Proficiency Assessment, SELP. And the levels -- when you assess the student, certain levels come up as far as proficiency. The teachers wanted to know exactly how those proficiency levels matched up with our standards, our performance standards, so that was developed for them to give them an idea. Again, we were trying to make things easier

p.47

for them and assist them in their instruction.

Q. Now, prior to the year 2000 were there any uniform procedures in the State of Arizona to identify and evaluate the placement of ELL students?

A. There were four assessments that were used statewide, and that's -- it wasn't uniform, depending on what district you were at. In my -- well, depending again, Washington used LOSS. Students came from another district, they hadn't been assessed with the assessment we had, we would reassess them.

The whole purpose of going to a single assessment was so that you have that consistency, everyone is on the same page. So the four -- I'm sorry, I veered away from your question again, didn't I?

Q. That's all right. Let me ask you this question. Did the state board in November of 2001 specify that

the department provide a method for identifying and placing ELL students?

A. Yes.

Q. Is there also a statute that requires that all ELL students who have language other than English be assessed by an examination?

A. Yes, that's true. That's also under Title III, or Title III federal ruling says that we

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have to identify students.

Q. Do the departments use any particular test to determine whether a student should be classified as an English language learner and the level of proficiency of that ELL student?

A. The SELP was approved by the board because of work that had been done through a task force. Again, we developed a rubric that was -- that looked at the proficiency standards. Again the requirement was that the assessment had to be aligned to our proficiency standards so that we were testing the right thing. So we developed a rubric using our proficiency standards. We went out for request for proposal, and five publishers sent in their materials for us to evaluate. We went through item by item of each one of those assessments that the publishers sent in the SELP, which is the Stanford English Language Proficiency Assessment by Harcourt, was the only one as closely aligned to our proficiency standards as it was. That was at 69 percent.

We did an alignment study ourselves, came out at 68 percent. The federal government said we should not be involved in the alignment study. We

went to the University of Arizona and adopted -- Jerry D'Augustino did that alignment study and he came out

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at 69 percent.

Q. What does 69 percent mean?

A. It was 69 percent aligned to our standards. In other words, 69 percent of what we were assessing was being done with that particular test.

Q. And did SELP more than -- what does SELP stand for?

A. Stanford English Language Proficiency.

Q. Did SELP more closely -- was it more closely aligned to the proficiency standards than any other exam?

A. Yes. That was the reason it was selected.

Q. Now, today is every school district or charter school in the State of Arizona required to use a single standardized test?

A. Yes, they are.

Q. When did SELP -- when was SELP adopted?

A. It was '04-05 school year. I don't remember the month exactly. But it's been used in '04-05 and '05-06 was the time frame we used it.

Q. So SELP was used for two years, the '04-05 school year and the '05-06 school year?

A. That's correct.

Q. Now, did Arizona go to a new test?

A. Unfortunately, our federal program officer

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stated that we needed to have something more closely aligned than 69 percent. They wanted a higher alignment. Again, we always seemed to be a

little behind, so it was less expensive and easier to do an augmentation, so we took the SELP, kept 30 percent of it and augmented the assessment, and now we are calling it AzELLA.

THE COURT: Calling it what?

THE WITNESS: Arizona English Language Learner Assessment.

BY MR. BISTROW:

Q. And is AzELLA the new assessment test that is currently in effect?

A. Yes, sir, it is.

Q. And every school district and charter school in the State of Arizona in terms of assessing and evaluating ELL students must now use AzELLA; is that correct?

A. That is correct.

Q. Now, I want you to turn to Exhibit 204. And I don't want to belabor the point with regard to this particular exhibit. Can you tell us generally, first of all, these documents are labeled "Proprietary and Confidential" and you understand that all of these documents are proprietary and confidential; correct?

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A. Yes.

Q. And can you just generally explain what Exhibit 204 is?

A. That was the assessment we used the past two years. This is our Stanford English Language Proficiency Assessment.

Q. Now, we included in this packet some sample test questions, a couple of sample test questions; correct?

A. Okay.

Q. We'll just take one example. If you go to the middle grade level, the middle grade cover sheet.

A. Okay.

Q. And you go to the page right after that cover sheet, this is a Stanford English Language Proficiency Test for the middle grade level; correct?

A. Yes, it is.

Q. And that would be -- would that be ELL II or III as you described it before?

A. III.

Q. ELL III. Now, I take it that this page would be one of the sample questions that would be given to an ELL student; is that correct?

A. Yes. Actually, it's -- a sample is at the top. The test actually begins right after that.

* * *

[MORENO, T-1, 55-78]

Excerpt from Testimony of Irene Moreno

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. . .

Q. Prior to the year 2000 did the state itself as opposed to courses you could take at the university level, did the state itself, the Department of Education, provide assistance for teachers and administrators to obtain language endorsements?

A. The state, no.

Q. Now, under your direction has the Department of Education designed and implemented structured English immersion endorsements?

A. Yes, we have.

Q. And does Arizona now require SEI endorsements?

A. SEI endorsement is required of everyone that holds a teaching certificate, from superintendents on down to regular teachers.

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Q. So all administrators and all teachers in the state of Arizona now must have an SEI endorsement?

A. If they hold a teaching certificate, yes.

Q. Now, how was the SEI endorsement developed?

A. Oh, gosh. That was a very, very long process as well. We pulled together constituents. Generally our task force meetings, oh, gosh, we had as many as 30 to 35 LEAs, universities, community colleges all involved in that particular process. There was a lot of discussion as to what we wanted it to look like, the number of hours that it would entail. That truly took an entire year to put together.

We did come to consensus with every one of the task force meetings that we had. Again, every one of the universities was involved and, well, other -- Grand Canyon and then we had community colleges as well as our constituency.

Q. Now, as I understand it, there are -- well, why don't we do this. Let's turn to Exhibit 206. And Exhibit 206 is entitled Curricular Framework for Provisional Structured English Immersion Endorsement Training (15 Hours).

A. That's right.

Q. Now, are there two types of endorsements?

A. Actually, it's one endorsement, but one is a

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provisional which allows you to get through the process in pieces. It's a two-part, so you have a provisional that is good for three years and then you've got the additional 45 hours which constitutes the full endorsement.

Q. So a full endorsement then comprises the 15 hours, which allows you to have a provisional endorsement, and then 45 hours, so there's a total of 60 hours of work needed to get a full SEI endorsement?

A. That's correct.

Q. When, as I understand it, the provisional endorsement, every single teacher and administrator holding a teaching certificate in the State of Arizona must have had a provisional endorsement by August of 2006; is that correct?

A. August 31st of 2006, yes, that is correct.

Q. And what is the deadline for achieving the full endorsement by all Arizona teachers and administrators?

A. Full endorsement should be upon recertification, and that would vary. We need to keep in mind that the provisional is only -- is not renewable after three years. So, I mean, after the three-year period you can't renew it, so you would have to have it within that time.

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Q. You would then have to have your full endorsement?

A. Yes, sir.

Q. Now, the provisional endorsement entails I think you said 15 hours. Now, what kind of training

is undertaken or is provided with regard to the 15 hours for the provisional endorsement?

A. The 15 hours can be professional development or it can be a one-credit semester at a university. And what we do is approve syllabi providers, and once those are approved they're taken before the board, the board approves those providers, and then they're placed on the web site so there's an opportunity to go through the web site and find particular providers of that endorsement, the provisional.

We also have the Arizona K-12 center that's in partnership with ADE that offers the provisionals also working on the 45, and ASSET, which is on line also, has offered this.

Q. I'm going to get into the details a little bit on that.

A. Sorry.

Q. With regard to Exhibit 206, the first page of that exhibit, does that set forth the curricular framework for the provisional endorsement?

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A. Yes, that does.

Q. Does the second page of that exhibit set forth the curricular framework for the full endorsement?

A. That's correct.

Q. And what is the purpose of these endorsements?

A. Again, to give -- lift the comfort level of those teachers that did not work with second language learners, gives them strategies, gives them the foundations of SEI, why we are where we are. We talk about proficiency standards, which weren't in

place, and also the assessment, which are all keys, tools that we use as teachers. So it's -- and the reason for the administration is, as we are working with our constituents, the comments always were, well, they come to observe but they don't know what they're observing.

And so that was the reasoning there also, it gives everyone that comfort level of knowing what it is we're looking for and what is required to work with these students.

Q. Why is there a requirement that everybody have the -- at some point the full endorsement by 2009? Why not just those teachers who are involved in

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teaching ELL students?

A. And it wouldn't necessarily be 2009. I have to correct that quickly because that, I kind of have been stomped on about that, okay, so upon recertification.

The reason for that is because eventually, if you live in Arizona, you're going to encounter a second language learner. It may not necessarily be a Spanish speaker, but we've got people coming from everywhere and you need those strategies that help to get you to again lower that comfort level so they're no longer saying, "Those are your kids." You know, everyone takes part. This is all part of the education process.

Q. Now, there's a flow chart, which is the third page of Exhibit 206?

A. Yes, sir.

Q. Can you just briefly describe what is meant by this flow chart?

A. If you have a bilingual or an ESL endorsement, you don't have to have the SEI endorsement, you have had a lot of those strategies. The only thing, as we worked with the task force, was they asked that those teachers that have those look at assessment, an assessment piece, and also the

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standards. If -- well, can I take this apart?

Q. Sure.

A. If -- oh, it is on there, so people can kind of see, it's a little easier when you have that.

If you have that and you're grandfathered in, you don't have to worry about it, otherwise you end up having this. The only difference here is the new teachers, they then would have -- that would be provided at the university. The university then takes care of that.

If you're a new teacher to the state there's a reciprocity provision that's made for that, and I believe they have one year to complete that.

Q. Okay.

A. Is that enough?

Q. Yes.

A. Okay.

Q. Now, you mentioned that not all those holding a certificate have to have the full endorsement by 2009. Can you explain that?

A. Certain -- well, like Washington was one that moved on it immediately. As we worked with the constituents through those task forces they wanted

to have credit for the work they'd already done, so we allowed them that time frame, I mean the time frame

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that they'd worked. So if they got their 15 hours after 2001, we said, absolutely, you should have credit for that because it covered -- they helped develop the curricula framework, and what they -- the work that they had done, the studies that they had covered that particular area.

So the only difference with them is that they would not get the reimbursement piece that the other teachers would get, but they got credit for it. So some of those teachers would have to get it a little earlier.

Q. What do you mean "reimbursement"? Has the state reimbursed teachers for the training that they've received to obtain the SEI endorsement?

A. Yes. There was funding that was allocated for professional development in this area. So if you got your SEI endorsement, no matter where you decided to get it, the provisional, you were reimbursed a certain amount of money.

Q. By the State of Arizona?

A. Yes.

Q. In your professional opinion is this endorsement requirement critical to the instruction of ELL students?

A. I believe it is.

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Q. Why is that?

A. Again, the structure, the consistency. We have things in place for all other students, it's kind of

nice to see that, you know, we're looking at an assessment, we're looking at curricular frameworks, we're looking at proficiency standards. We're no longer a threat. It's no longer, well, somebody else can take care of these kids, because they have that particular training. Everyone needs to educate them, and now we're giving them tools to be able to do that.

Q. You mentioned that money has been provided by the state for teachers to obtain the training. Is this -- was this monies that were appropriated under House Bill 2010?

A. That's correct, it was 2010.

Q. And as I recall, and we -- that statute, that house bill is attached to your exhibit as Exhibit 208; is that correct?

A. Yes.

Q. And I believe --

A. Yes, it is.

Q. And Section 11 of that statute, the state appropriated $4.5 million for the purpose of providing funding for these endorsements; is that correct?

A. That is correct.

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Q. Does your department provide oversight of the endorsement process?

A. We do. We actually again evaluate the syllabi, make sure it covers the rubrics, we compare it to the curricular framework, and then we recommend it for approval to the state board.

Q. Has the Department of Education developed partnerships with entities to assist in providing SEI endorsements?

A. Yes, that partnership with the Arizona K-12 Center. They assured us that they would use the SIOP (ph.) method and cover the framework the way it was laid out.

Q. What is the SIOP method?

A. Oh, my, I shouldn't have said that because now I have to remember the acronym.

Q. Explain to us what it is.

A. It again is a structure that shows you how to teach English to students. And that was for -- from Dr. Janet Echevarria. She's written a couple of books, and it's called Strategies for Working with Your Second Language Learners or English Language Learners.

Q. You mentioned an organization I believe called ASSET. Is that one of the partnerships?

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A. That is the other partnership and that is done on line. That initially was done for free, so if you took the class on line teachers did not have to spend any money out of pocket. And they've reentered that and now the fee is a minimal $70 for it.

Q. Did any of these partnerships exist prior to 2005?

A. They did not.

Q. So these are new partnerships to provide SEI training that have been provided by the department since 2005?

A. Yes.

Q. Can endorsements -- I think you said endorsements also could be obtained at the university level. They now have courses in place for SEI endorsement training?

A. That is correct, and also some of the community colleges.

Q. Prior to the year 2000 did the Department of Education have a consistent outreach program to ELL educators in the state?

A. Not that I'm aware of.

Q. Since 2000 has the department developed monthly meetings within its staff and practitioners of English language learners?

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A. One -- I think it had to have been in '04, we created a practitioner of English language learner meeting. We have monthly meetings.

Q. Who are those monthly meetings with?

A. Our constituents. We invite teachers, community colleges come in. It varies. It's an open meeting. We have some administration that comes up. But generally it's our ELL coordinators and --

Q. When you say ELL coordinators, ELL coordinators from school districts throughout the state of Arizona?

A. Throughout the state of Arizona. We generally have anywhere from 100 to 150 LEAs present at our monthly meeting. We've had to change locations twice to accommodate.

Q. What is the purpose of having -- by the way, there's an acronym for this, it's called PELL, P-E-L-L?

A. That's correct.

Q. And I want to show you Exhibit 207.
Are these dates of your monthly meetings?
A. That is correct.
Q. Through 2006?
A. Yes.
Q. What are the purpose of these meetings?
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A. Initially it was just to disseminate information and answer questions. There were a lot of issues that come up, understanding things that are going on statewide, in particular EAS, and rather than having the wrong information out there, we just made it a point to be at necessary meetings and answer questions. They usually go from three to four hours. It's just a lot of conversation, a lot of anxieties are eased. Basically that's it.
Q. Do you get into technical issues at these meetings as well?
A. We get into all kinds of things at these meetings. Generally I tried to make sure that all the staff was there so that if there were data issues I had a data person able to do that, if there were fiscal application issues I had someone that could answer those fiscal application things. We have a Harcourt individual, doesn't work for Harcourt, it's EAS, but their expertise is in that particular area, so they are there. Then we have a monitoring person.
So I really worked trying to make sure that everyone that needed to be there was there so that we could answer all questions and not have to say, well, we'll get back to you.
Q. Has the department also designed and
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developed annual structured English immersion seminars?

A. Yes, we have.

Q. And did any of this exist prior to the year 2003?

A. Not to my knowledge.

Q. And what is the purpose of these seminars?

A. Well, we initially I think started as let's share this information. There was new laws in place, we needed to make sure that they understood it. For me truly it was to build more of a rapport, "We're not out here to get you, we're really here to assist you."

The whole purpose was to offer some technical assistance, to be able to tell you, you know, guys we want you to be in compliance, it's not an issue of, yeah, we're going to write you up or we want to write corrective actions. That was the whole thought, is just to be of service.

Q. Do these seminars provide professional development?

A. They do.

Q. Do they provide up-to-date teaching strategies?

A. They do. We have national speakers and we

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also make sure that we tap into our LEAs that are effective in different areas.

Q. You mentioned LEAs, and LEA is your local educational agency?

A. Yes, our districts' local educational agencies, yes.

Q. So when you say LEA you're talking about school district?

A. Yes, sir.

Q. Are materials distributed at these seminars?

A. Yes, they are.

Q. All the latest and best practices on how to teach ELL students?

A. We try to make sure that there is a strand of some of that involved. We also published additional standards to make sure that those are handed out. We put standards on CDs. I mean, we really tried to be as accommodating as we possibly can.

Q. How well attended are these seminars?

A. Very well attended. In particular this last one we had to cut our registration I think three weeks before we were ready to because we had reached our limit of 250.

Q. Now, in back of the first page of Exhibit 207 are the cover sheets of various seminars that you have

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provided since 2003?

A. That's correct. Some of these have been for the provisional, so we were -- we offered it through the department so those that attended could have actually received their -- the hours they needed for the provisional endorsement.

Q. So do you have breakout sessions at these seminars as well?

A. Oh, absolutely. Yes, there's several breakout sessions with national speakers, keynote speakers, and we really -- never mind. Oh, I'm going to say it. I really think it's a way of valuing these particular individuals because we have them at nice resorts. And the only reason I bring that up is we had a

national speller at our last conference and she says, "What a wonderful way to validate your ELL coordinators and the teachers of the state because you have it at wonderful places." So we really make it a point to do that.

Q. Now, prior to the year -- I'm going to change to a different subject now.

Prior to the year 2000 did the Department of Education have a consistent protocol for monitoring school districts to make sure they complied with federal and state laws?

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A. Not to my knowledge.

Q. Now, I want to show you Exhibit 209. Since the year 2000 has the department developed guidelines to monitor school districts and charter schools for compliance?

A. Yes, we have.

Q. Does the department require each school district to provide certain information?

A. Yes, it does.

Q. Do you require them to provide information regarding the number of ELL students classified for the first time?

A. Yes. I don't know if it's the first time. I have to throw that in there. We did not have reclassified actually requested anywhere, so, yes.

I'm sorry, I had to sort that in my head. I apologize.

Q. Well, what information do you require school districts and charter schools to provide?

A. When we monitor?

Q. Well --

A. Is that --

Q. You indicated that school districts and charter schools are required now to provide certain information, and one of the things you mentioned is

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the number of ELL students that are classified for the first time. What about the number of ELL students acquiring proficiency levels?

A. We need to have the number of students that are actually in the program, we need the number of students that are reclassified, and there needs to be a number of -- we need to know how many students have actually moved from one level to the next. I mean proficiency level.

Q. Under the Flores decree are there certain minimum requirements for monitoring?

A. Yes.

Q. And you understand the *Flores* consent decree?

A. I do.

Q. Can you tell us briefly what that consent decree requires?

A. The monitoring of 32 schools statewide. The top -- the first 12 or the top 12 are the larger number of districts that have the largest number of ELL students in that district. Then you have your next level, which is the middle numbers, so you monitor 10 of those particular schools. And then you've got those schools that have less are the last level. So it's a total of 32 schools that we have to monitor.

Q. Now, with the increased staff that you now have, have you been able to monitor more school districts than what is required by law?

A. Absolutely.

Q. How many -- can you tell the Court about that?

A. We actually have doubled the number of LEA districts that we are monitoring, and we are able to not just look at files, but able to monitor classrooms, speak to teachers, talk to administrators, do, you know, occasionally student-type interviews. So with the staff increase we've been able to get more of that done, plus offer more technical assistance.

Q. I just want to go through with you briefly Exhibit 209. The first page simply sets forth the requirements for monitoring; is that correct?

A. Yes.

Q. And then the next two pages are -- is the provision from House Bill 2064 dealing with monitoring; is that correct?

A. That is.

Q. Then the next document is entitled Overview of 2005-2006 Monitoring Results. Can you tell us briefly what that is, and then there's a series of documents that are attached to that.

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A. This actually gives you rule and it tells you what it is that we're looking for. Says each year the department shall monitor at least 32, and that was the 12 of the 50 LEAs with the highest enrollments, then 10 LEAs with LEAs that are not included in the 50 described, and then 10 that have 25 or less. So that's actually the rule.

The next page gives you an overview of what it was that we did. Some refer to technical assistance and monitoring, so we didn't just go in to do the

monitoring, which was look at files and things of that nature that I've already spoken to, but we actually offered technical assistance. Could be, you know, corrective action that they wanted to go over, maybe they weren't sure how to set up a particular program, maybe there were notebook issues that they wanted some help with. So those varied.

As you can see, it's described, there's technical assistance, the monitoring. There was complaints, we also went on complaints. If we get a written complaint from a constituent, we make it a pint to go to that district and then get back to the person letting them know what we found and try to take care of things that way.

Q. Irene, also in this exhibit you have attached

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a document called Monitoring Protocol. What is that? Do you see that there?

A. I do. This is what we give the LEAs or share with them so they know what to expect when we're coming.

Q. There's also, the last page of that particular document is a two-page document which is entitled SEI Classroom observation, English Acquisition Services Monitoring Checklist. Are these the kinds of things that you look at when you're out at the schools?

A. Yes, they are.

Q. Is this a form that was developed under your supervision?

A. Yes, it was.

Q. Now, you indicated in your prior testimony that with the House Bill 2064 you are already

advertising for what you hope to be 20 additional positions. Can you explain, what do you expect these new additions, these new employees to do?

A. We have always monitored for compliance. I think the thing at this point is looking for -- to offer the technical assistance. We want to be able to evaluate the school and put -- move them in a direction that would get everyone at the achievement

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mode that we need them to have. So it's more of an evaluation, technical assistance so that everyone in the state is making their AMAOs and AYP.

Q. In your opinion would these additional positions improve ELL education in the State of Arizona?

A. I'm saying yes.

Q. And is it your opinion that -- there are school districts in the State of Arizona today that in your view are doing quite well with their English language learner programs?

A. Yes, there are.

Q. Is one of the purposes of these additional personnel that's been provided under -- per the funding that will be -- let me -- I'm garbling this.

In terms of these 20 additional individuals that you are currently trying to hire, is one of the purposes of hiring such additional personnel to take the strategies and the lessons and the best practices from these school districts that are doing well and spread them to all school districts and charter schools throughout the State of Arizona?

A. That's our hope, yes.

Q. And with this additional funding do you believe there to be a -- well, strike that.

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Since you've been at EAS in 2003, with the expansion of your staff and the expansion of your duties, in your view has there been a substantial advancement in terms of ELL education in the State of Arizona?

A. Yes, I do.

Q. Now, Exhibit 210 is House Bill 2064; is that correct?

A. Yes, it is.

Q. Now, within the last couple of years did your office design and develop some structured English immersion models as guidelines for school districts throughout the State of Arizona?

A. We did.

Q. What was the purpose of those models?

A. Again, just guidance. Districts, as we sat through some of our PELL meetings and we made reference to the law, wanted to have some guidance, so we developed some models that we thought would fit in all the grade levels and shared them.

Q. How were the models developed?

A. Our staff, I mean, with just three of us, have over 70 years of teaching experience, so, you know, we did a lot of talking, read lots of articles and then did some compromising and came up with the

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models that we placed on the web site.

Q. By the way, does EAS have an advisory council?

A. It does.

Q. What is the advisory council?

A. The advisory council came together to revisit these particular models. They wanted more fluidity, they wanted something that gave them more leeway with what they were already working on. So we met, looked at the law and then talked about what they had in place, and -- and we haven't met in a while.

Q. Well, we talk about "models." You know, so that the Court is clear, what are "models"?

A. Models --

Q. "Models" are referred to in House Bill 2064. What are "models"?

A. It's the way, the structure and setup of a particular classroom. I think they go to the extent of looking at class size, curriculum -- oh, my goodness. It's -- the model is the way the program is set up for the SEI program.

Q. Now we have House Bill 2064; correct?

A. Yes, sir.

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[MORENO, T-1, 184-192]

Excerpt from Testimony of Irene Moreno

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Q. And on the far left-hand column of that particular exhibit it has the fiscal years. That means -- when does the fiscal year of a unified school district end? June 30?

A. Yes.

Q. So fiscal year 2004 that's the 2003-2004 academic school year?

A. That is correct.

Q. And it states that there were 39 students reclassified in 2004, with a total ELL population of 3,888, and the percent reclassified was 1 percent. Do you see that?

A. Yes, I do.

Q. Then 2005 the number jumps to 23 percent. Do you see that?

A. Yes.

Q. Do you know what accounts for that significant jump?

A. Well, it could be two factors that I'm thinking about. With House Bill 2010 teachers were given incentive monies for each student they reclassified. It was $250 per ELL student that was reclassified.

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We also now have proficiency standards in place that are aligned to our academic standards, and if teachers had been using the academic standards to teach and because we're aligned with the new assessment being closer aligned to proficiency standards, that could be another reason.

THE COURT: I'm sorry to interrupt, but I need you to explain that to me again. A teacher themselves got an extra 250 if they got a kid reclassified? Is that what you're saying?

THE WITNESS: That is through --

THE COURT: In their own pocket?

THE WITNESS: In their own pocket.

THE COURT: All right.

BY MR. BISTROW:

Q. Now, in 2006 the percent reclassified jumps to 35 percent, and, again, what do you account for that?

A. I think it's our proficiency standards. I really believe that if they are teaching to the standards -- only because we already had standards in place. If those are being used when they teach the curriculum, ours are aligned and linked, our proficiency assessment is aligned to our standards, that would mean these students would do better and end

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up reclassified. That's my theory.

THE COURT: Did they get the same 250 that year, too?

THE WITNESS: No, they didn't that year.

BY MR. BISTROW:

Q. Now, the second page of Exhibit 218 is the AMAO report that we discussed previously for Nogales for fiscal year 2006; correct?

A. Yes.

Q. And I want to see if we can explain these numbers.

First, there is a column called grade range. These are K-2, grades kindergarten through second grade, third grade through fifth grade, sixth grade through eighth grade, and ninth grade through twelfth grade; correct?

A. That is correct.

Q. And then the next column is percent making progress in each of these grade levels; correct?

A. Yes.

Q. Now, what kind of progress must our ELL population in the State of Arizona make in order to make progress? What do they have to do?

A. They have to move from one proficiency level to the next. That means they have to move up a

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proficiency level. If they happen to be preemergent, they need to move to emergent.

Q. So let's talk about these different levels. You got preemergent?

A. Yes. Emergent.

Q. What are the other ones?

A. Basic, intermediate, and proficient.

Q. Now, according to this -- by the way, is the AMAO data provided by Nogales and then collated by the Department of Education?

A. Yes.

Q. So according to this particular report, in K-2 74 percent went from one proficiency level to another?

A. That is correct.

Q. And we could read all these percentages down the line; is that correct?

A. Yes, sir.

Q. For the year 2006 what percentage was required by the federal government in terms of gaining -- in terms of gains in proficiency progress?

A. We had set 12 percent. We move up one percent each year as we grow.

Q. And that is what the next column refers to where it says, "Met 12 Percent Progress"?

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A. That's correct.

Q. So in terms of a conclusion, what conclusion would you reach from these numbers that vastly exceed the 12 percent?

A. That perhaps the state has set their standards a little lower than they should have and we should all be striving to make at least 50-percent gain statewide. If -- again, if Nogales can do that, being a border town, certainly the rest of the state can manage to do just that. I mean, that would be what I would conclude, that perhaps we need to look at this a little differently and raise our standards.

Q. However, per No Child Left Behind Act you're in full compliance with federal law with these percentages?

A. Yes, we are.

Q. As a matter of fact, Nogales is vastly exceeding these percentages?

A. Yes, they are.

Q. Now, the percent reclassified, again we have the percentages, and what percentage -- what percentage of reclassification is required for the year 2006 by the federal government?

A. Twelve percent.

Q. And, again, the classification rates in the

Nogales Unified School District for -- in their AMAO vastly exceeds that?

A. Yes, it does.

Q. Then the last column is AYP?

A. That's right.

Q. And do a certain percentage of ELL students have to make AYP?

A. It is the same percentage.

Q. That's 12 percent?

A. Um-hum.

Q. What is AYP?

A. Annual yearly progress, and it's based on academic.

Q. Proficiency?

A. Yes.

Q. And those are your AIMS tests?

A. That's correct.

Q. Now, when you say 12 percent have to meet AYP, is that on all three AIMS tests?

A. Yes.

Q. Please turn to Exhibit 219.

Now, this is the Nogales Unified School District report card for 2005/2006; is that correct?

A. Yes, it is.

Q. Now, if you take a look at the far left

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column you'll see where it says 2004-2005. Do you see that?

A. Yes.

Q. And then 2003-04. Is that -- the results from these report cards are about a year behind; correct?

A. Yes.

Q. So the report card for -- in terms of measuring adequately yearly progress for 2005-2006, those report cards are not in yet; is that right?

A. Correct.

Q. So this is, in fact -- what we have on Exhibit 219 is the latest data from Nogales Unified School District or, for that matter, any other unified school district for the State of Arizona; correct?

A. Yes.

Q. I then want you to turn to Exhibit 220.

Now, this is a document that was provided to the movants in this case by the Nogales Unified School District; is that correct?

A. Yes.

Q. And you've had an opportunity to take a look at this document; is that right?

A. Somewhat.

Q. Okay. Let me -- this is spring 2006 AIMS

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performance comparisons. And I just want to point out a few things and get your comment.

If you take a look at grade four math, you'll see that reclassified -- at the reclassified ELL averages on the AIMS math test at fourth grade is 503.5. Do you see that?

A. I do.

Q. And then below that you see English only average for math grade four of 489.9. Do you see that?

A. Yes, I do.

Q. Now, it appears -- and if you take a look at all the various grade levels that are noted on this chart and you compare the reclassified ELL students to the regular English-speaking students at every grade level in math, in reading, in writing, can you tell us generally, how well are the reclassified ELL students in comparison with the regular English-speaking kids in the Nogales Unified School District?

A. They're very comparable. In some areas they seem to be doing better than our native English speakers.

Q. Indeed, if you go back to Exhibit 219, the schools in the Nogales Unified School District, they are all either performing, performing plus, or

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excellent schools in accordance with the report card; is that correct?

A. Yes.

Q. Irene, based on your observations and this performance data that has been recorded in the records of the Department of Education as well as information that has been provided to us by the Nogales Unified School District, based on all of these things, in your view did the Nogales Unified School District have sufficient resources to provide an excellent program for NUSD's ELL students so they could overcome language deficiencies?

A. Yes, very definitely.

Q. Based on the -- your observations at the Nogales Unified School District back in March and based on all the data that has been collected, did Nogales's ELL students have an appropriate program so that they had an opportunity to fully participate in Nogales's academic programs?

A. Yes, they did.

Q. Did you observe, other than the Wade Carpenter thing, any lack of material, textbooks, teacher shortages, inappropriate ratios at the Nogales Unified School District?

A. I did not observe that.

* * *

Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 11, 2007 10:00 a.m.

[MORENO, T-3, 60:13-62:12]

Excerpt from Testimony of Irene Moreno

* * *

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. . .

Q. So it's not unusual to see test results at elementary and then compared to middle and then high school go down --

A. No.

Q. -- in rankings like this?

A. Right.

Q. Right?

A. But it's all students, not just second language learners.

Q. Nevertheless, the numbers at Nogales High School are not very good. Would you agree?

A. I would agree.

Q. Those are not acceptable numbers as far as

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you're concerned?

A. No, they aren't.

Q. And you talked about some of the things you observed at the high school the other day; correct?

A. That is correct.

Q. I think you mentioned that you had visited, what was it, right before a break or something like that? Was it spring break?

A. I think that's what they explained. March, I would assume is spring break.

Q. Okay. Now, what about on that same page where we've got Nogales High School, which ranked 5, you got Wade Carpenter Middle School, which ranked 409.

A. Yes.

Q. And I assume that's not an acceptable result to you, either?

A. No, it isn't.

Q. And what did you observe there that you think may contribute or account for that low ranking?

A. All we were -- all I observed were single classroom sets of their content books. I didn't see them having anything for students to use for homework or things of that nature.

Q. You didn't observe students playing bingo or

anything like that?

A. Not there, no.

Q. And likewise at the alternative high school, which is the last one on the last page of that, which is ranked third from the bottom. I assume -- I mean, these are difficult students; correct?

A. Yes.

Q. They're not dumb students, though; right?

A. I don't think, no.

Q. This isn't an acceptable result even for difficult students, is it?

A. No, it isn't.

* * *

[MORENO, T-3, 93:21-94:11]

Excerpt from Testimony of Irene Moreno

* * *

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. . .

Q. Okay. And then the next chart on that page shows the four-year graduation rate for Arizona students; correct?

A. Yes, it does.

Q. Okay. For all students the graduation rate

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for 2004 was 77 percent and for 2005 was 75 percent; correct?

A. Yes.

Q. Okay. Now, would you go down to limited English-proficient. What about the graduation rate for limited English-proficient?

A. It's 59 percent in '05. Doesn't show anything in '04.

Q. Now, is that an acceptable graduation rate from your standpoint?

A. No.

* * *

Appendix I

[MORENO, T-3, 167-169]

Excerpt from Testimony of Irene Moreno

* * *

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. . .

Q. Now, at least I see a little bit of a trend in this document. If you look at the middle schools, the two middle schools, and you look at the high schools, their percentages of passing all three seems to drop down from the elementary schools. You see that same trend?

A. I do.

Q. Let's talk for a moment about what kind of children or students would be ELL in the later grades the high school grades or the middle school grades.

Now, it's possible, at least theoretically, that you could have had a child that started in the first grade in Nogales and by the 8th grade still has not learned English. That wouldn't be good, but I guess theoretically it's possible.

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A. It's possible, but it wouldn't be a language issue necessarily. If a student is being taught in English and the environment that they're in is in English, even if it's in another language at home, there's other issues. It's not a language issue. So I just --

Q. Okay. No, fair enough. I'm glad for that clarification. What you often have in the higher grades if you have ELL students, you've got students that are new to that district; is that a fair statement?

A. That could be, yes.

Q. So in this case these could have been children who had not been in the Nogales Unified system for very long?

A. That's possible, yes.

Q. Some of them could be recent immigrants; is that a fair statement?

A. Yes, it is.

Q. And I believe Dr. Porter had told us that the younger children seemed to learn English more easily but not necessarily as efficiently as the older children. Is that consistent with your experience?

A. Yes, it has been.

Q. So once we get to those higher grades in the

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9th, 10th, 11th, 12th grade it becomes a little tougher to teach these children English; is that a fair statement?

A. Tougher in the sense they're a little more apprehensive, they're a little more embarrassed. You know, that apprehension in there. In that sense, yes.

Q. First grader is not going to be as scared to make a mistake on answering a question or something like that as maybe an older child?

A. That's correct.

Q. And you don't have all that peer pressure that you might have, teasing and so on?

A. That's right.

Q. Now, can we deduce from this chart whether Nogales Unified is doing a good job in teaching ELL students, doing a bad job in teaching ELL students, or can't really draw a conclusion from just this sheet?

A. You're right. I mean, we'd need a little more data than just what's here.

* * *

Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 9, 2007 9:58 a.m.

[PORTER, T-1, 113-116:4]

Excerpt from Testimony of Rosalie C. Porter

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. . .

Q. And you were also provided with a copy of Exhibit 221, which is a newsletter written at the -- which is -- I'm sorry, which is a newsletter for the Nogales Unified School District that was issued the fall of 2006?

A. Yes, correct.

Q. Now, based on your review of these various documents, do you have an opinion regarding the success of the English language learner programs in the Nogales Unified School District?

A. I have a very high opinion of the Nogales Unified School District for the job it is doing for its ELL students and other students, but I'm principally interested in the performance of the ELL students, of

course. The high level of performance on AIMS tests, SAT-9 tests, the progress from year to year where improvement is shown, the high level of performance and the high percentage of students tested is better than what I have seen in many places in California, in Massachusetts, and other places. This is just a fine performance.

Q. How does this success -- well, I'll just go

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ahead and ask you, how does this success compare with what you've seen in other areas of the country?

A. Excuse me?

Q. How does this success in Nogales compare with what you have seen in other areas of the country?

A. Well, I think from my observation, Arizona has taken up this charge since the change of the law in the 2000 vote changing the law from bilingual to structured English immersion. The state has taken this obligation very seriously in the sense of what I heard this morning, but also what I have been reading in all the documents, the responsibility of seeing that better teacher training is done, that testing related to the proficiencies is done, because unless you have an objective measure it doesn't matter what kinds of things you say you are putting into a program.

I'm afraid this is what we did for the first 20 years or so of public -- of bilingual education. We said are you teaching X number of hours in the native language, do you have certified teachers, how much are you spending, are you teaching the cultural

background of the children? We talked about all the things that we were supposed to be putting in. We did not talk about what results, what was the outcome of

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all these efforts.

Arizona is looking at outcome, is looking at objective measures of student performance, and this is good. It's the only way you can say if certain schools or districts have students not doing well, there's where we need to concentrate more effort. California has come to the same. They designed a whole system for the whole state of standards that students have to meet at every grade level, tests on those standards, and then the schools that are underperforming are given more funding, but they're also monitored more closely.

And so I believe what I am seeing in Arizona is really first-rate efforts by the state to improve education, and the results are beginning to show.

Q. Just a few more questions. Does an increase in funding provide success for ELL students?

A. Not by itself. It's always good to have more money and maybe it will be wisely spent, but it is only one indicator, and unless it is tied to other things, it is not -- I would quote -- I would just cite Eric Hanushek, a professor at Stanford University, perhaps the best-known authority in this country, an economist, who has done the greatest research on whether -- on school funding, and he has

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concluded in several of his research studies that simply putting in more money does not necessarily

equal success. And I would cite him. Again, this is not my specialty, but I would say that.

* * *

[PORTER, T-1, 128:24-129:5]

Excerpt from Testimony of Rosalie C. Porter

* * *

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. . .

We've heard your testimony that 25, somewhere in the 20s is an appropriate number. Do you have an

p. 129

opinion about whether if you take that number down to 15 or 10 it can help speed up the rate of acquisition of English by English language learners?

A. I think if you take it down to 15 or 10, you really could speed up the rate of English learning.

* * *

[PORTER, T-1, 148-151:4]

Excerpt from Testimony of Rosalie C. Porter

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. . .

Q. Now, just because one school district spends $3,000 or $5,000 on a per-student basis for ELL programs, does that guarantee that you're going to have a successful outcome?

A. That alone is not the key. Money alone is not the key. The wise spending of it.

Q. And you found that in the Nogales Unified School District, which was spending $369 per incremental cost per the study, that they were providing a good ELL program; correct?

A. In our judgment, yes.

Q. Now, you mentioned -- you were asked some questions about goals, and even though I'm not sure that Mr. Hogan identified House Bill 2064, you were asked some questions about two-year requirements of the statute, and hopefully I'm not going to misinterpret the statute, but the statute has two components in terms of funding. One component says that English language learner students shall receive funding for a period of two years, at which time they are expected to exit the program, and if they don't exit the program within those two years, certain items of funding get eliminated, and that for those students who continue on after that two years who are still ELL

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students there is another item of funding that is provided for those students?

A. Yes. That's my understanding.

Q. My question to you is do goals in your view, in your professional opinion, do goals such as that make sense, and, if so, why?

A. They do. Let me say that in reviewing the policies in all of the large immigrant-receiving countries we found most -- all the other countries give one year of special help and they think it's sufficient. No other country in the developed world has ever conducted a bilingual program of the kind

that we put forth in this country. It's not done anywhere else.

So when we were talking about putting a citizen's ballot on the referendum in California we wanted to put a goal amount of time on it, and looking at the rest of the world it seemed if we say the goal is one year, all the students will not have mastered English that well at the end of the year, but we will also put in the law that those students who need more help, a second or third year, it will be provided for them.

That was the essence of the California referendum law, the Massachusetts law. I'm not

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familiar with the Arizona law. I assume it was about the same.

Having a goal time is important because it gives people something to work toward. We are going to try to teach English as well as we can. At the end of one year, at the end of two years we'll assess the students and maybe most of them will be doing very well, and if they continue to need a little help with reading and writing, we'll give it to them. That's my view.

Q. Now, in Arizona, and I don't know if you do know this, there is such a thing called group B weights whereby stipends are provided for certain categories of students, including ELL students.

A. Yes.

Q. Now, if you don't have these goals of two years, do you know whether there is any kind of financial incentive to keep students in ELL programs?

A. Well, I know that in every other state of the 16 states that have bilingual education laws or English language laws that there are -- there are higher levels of funding for ELL children compared to children who already know English, and that those higher levels are provided for a certain number of years or until students reach a certain proficiency.

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Unfortunately in some places these have been abused and students have kept -- been kept in year after year to get the extra money from the state. That's not the way it should be, of course, but it happens.

* * *

Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 24, 2007 9:59 a.m.

[SOTO, T-7, 25:3-32:2]

Excerpt from Testimony of Karla G. Soto

* * *

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. . .

Q. And if you go up, if you go across, you've got total ELL costs of 3.88 million dollars; correct?

A. Yes.

Q. And then you've got a per pupil amount for ELL students of $1570?

A. That's correct.

Q. And change. And then in the columns for funding sources, for example, in the M&O column, right next to it -- you see that?

A. Yes.

Q. -- it shows a grand total of 12.745 million dollars; right?

A. Yes.

Q. Now, that's not the amount that's being spent on English language learners?

A. No. This was just the total of the numbers that we used to come up with identifying areas in which there were ELL costs. However, in order for you to determine what the true M&O ELL costs are, you would have to go through each M&O line item and apply the percentage in that specific category to come up with that, and, in preparation for this, because I know that it came up during my deposition where there

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was some confusion about the number, I went back and added and actually wrote in the number that I came up with as true ELL costs within M&O, and that number is 2,039,000.

Q. 2,039,000?

A. Right. At $205. Yeah. The per pupil would be $824.25.

Q. Well, just -- let me make sure I've got this right. Out of M&O --

A. Right.

Q. -- the amount the district spends out of its M&O funds on -- for ELL programs incremental costs --

A. Right.

Q. -- for its ELL programs is how much?

A. $2,039,205.

Q. And how much does that calculate out to on a per English language learner student basis?

A. It's $824.25.

Q. Okay. I misunderstood the first time. $824?

A. Yes.

Q. So a little more than half of the total of 1570 is actually coming out of the district's M&O funds?

A. Right. And override funds are also part of the M&O budget, so that should be added in that

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figure. If you want to identify true M&O costs, then you would have to add the override figure into it as well, and my total for override was $107,429, and the pupil cost was $43.43. So total maintenance and operation would be about $867 per student.

Q. And remind us, what's the group B weight that the state provides for ELL students?

A. It's $364 and change, about $365.

Q. So you're spending -- Nogales is spending an additional 500-some dollars out of its M&O to support its ELL programs?

A. And that's what we found out through conducting the cost study is we were spending more on the per pupil basis.

Q. Now, so the balance between -- the difference between the $1570 total for each ELL student and the $867 that you've identified coming out of M&O and the override is attributable to all these other funds; right?

A. Yes.

Q. Classroom site fund, on and on, through the federal funds; right?

A. Right. And I didn't go through the same exercise in calculating all of them. I did look at Title I and see what we were spending in Title I,

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Title II and Title III.

Q. Do you have those figures?

A. Yes. Under Title I school improvement, the total for that column is 56,300, and all of those costs are ELL costs, and the per pupil amount is $22.76.

Q. 22.76?

A. Yes. That's Title I school improvement.

Q. And then Title II?

A. Well, there's two columns for Title I. The first one is identified as school improvement. The next one is Title I, and the total costs that I added for Title I was $857,735, and the per pupil amount is $346.70.

Q. And then Title II?

A. Title II the total was $14,045 and per pupil was $5.68.

Q. Title III?

A. Title III total was $266,775 and the per pupil amount was $107.83.

Q. And while we're there, what's that last column?

A. The last column is Title V innovative programs, and the total there was $2,675 and the per pupil amount $1.08.

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Q. Now, looking at Exhibit 7, putting aside the additional needs that you've got down there after these totals, but looking at Exhibit 7, is it your opinion that the costs identified there for English language learners would be saved in Nogales or go away if the district had no -- if all of the district's ELL students were fluent English-proficient and had never been classified as ELLs?

A. Are you asking the question just the additional needs?

Q. Yes. No, no, I'm sorry, not just -- I'm looking at the total, $1570, does all that money go away if Nogales doesn't have any English language learners?

A. I would think that for the most part they would. There would be some areas that we would probably have to go back and revisit, but because we haven't been in that scenario, I don't think that we have thought about, you know, making another cost analysis whether those programs should continue or not.

Q. Okay. Are there any that come to mind that you'd want to revisit to determine whether or not those costs would continue even if the ELL students were fluent English-proficient instead?

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A. I would think that lines 37 and 38, we would need to go back and revisit those.

Q. Gallileo and Turnleaf programs?

A. Right. I would think because it does address the entire population of the district, although they were put into place because of the needs that we had at the district and the need to identify the data and the need to know how students were performing on a quarterly basis, for example, I believe that those programs were put into place because of the high level of need, but I would think that they would be necessary to continue to a certain extent within the district. I don't know what the costs would be. I'm not sure how the costs are set up, if it's on a per-pupil basis or if it's on different modules, for example, that provide different tracking in different areas. I'm not exactly sure. We'd have to go back and look at that again.

Q. So those programs were put in place because of the high need that Nogales had; correct?

A. Right. And we wanted to use our own data to know how we were doing within the district in comparison to prior years, and what I've seen in different presentations at the district is that sometimes we can't compare apples to apples per se

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because the data or the formatting of the reporting of the data has changed throughout the years, not only at the district level but at the state level, for example, that we wanted to have an internal assessment system in place so that we could keep track of our own information and be able to compare comparable information.

Q. But otherwise, with the exception of lines 37 and 38 which you would want to reevaluate, you're satisfied that these other costs are the costs associated with educating English language learners that are over and above the costs for educating fluent English-proficient students?

A. I would think that those would be the two major items. Transportation would be another one that we would have to go back, I mean, if the ELL went away.

Q. Which line are you looking at?

A. Like 46, for example, transportation. We'd still have summer school programs, for example, which we would have to transport students. The question would be would we be transporting the same amount of students or less students. If it's less students, the cost would be less because we'd be

running fewer buses, for example. So we'd have to go back and make

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another cost analysis in that specific program to see what the costs or the projected costs would be.

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[SOTO, T-7, 54:13-55:14]

Excerpt from Testimony of Karla G. Soto

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. . .

Q. Finally, you're aware that in the legislation passed last year in House Bill 2064 there's a new requirement that is part of the models that get adopted by the task force that it include -- each model include four hours of English language development for first-year English language learners?

A. Yes.

Q. You're familiar with that?

A. Yes.

Q. Do you have an opinion about whether that's going to affect the incremental costs of providing ELL instruction in Nogales?

A. Well, I would think that would change the

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setting of the current classroom in Nogales where we would probably have to have extensive pullout programs because of the large ELL population that we have. We'd have to take into account whether we'd have the facilities, the staff,

the curriculum, so there would be different areas that we'd have to identify as areas of need and then come up with some cost associated with each.

So my first thought would be, yes, there would be additional costs. I can't tell you to what extent those would be.

Q. You haven't attempted to calculate those at this point?

A. No.

* * *

Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 12, 2007 10:15 a.m.

[VALDIVIA, T-4, 141-145]

Excerpt from Testimony of Richard J. Valdivia

* * *

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Q. And Title III is specifically for --

A. It's for the education of English language learners, providing services.

Q. Okay. Now, let's drop down in your chart on the same page and let's look at the override.

A. Okay.

Q. We heard from Superintendent Cooper that at least in his tenure two overrides were adopted, one before he got there but it was still in effect and then another just before he left?

A. That's correct.

Q. What does this chart tell us?

A. Well, it just tells you Nogales went to their voters and passed an override beginning in 2001 and

through 2007, and accordingly raised additional funds from their taxpayers.

Q. Okay.

A. This is outside of their regular equalization amount.

Q. What are the limitations, sir, on how this money can be spent?

A. I believe this money can be spent for anything that's related to maintenance and operations. Again, this isn't something, you know, but I believe that it can be -- it basically goes into

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the equal -- you know, the amounts that they use for maintenance and operations. That's my understanding.

Q. It goes into the M&O fund?

A. That's correct.

Q. An item that M&O money can be spent on is ELL?

A. Correct.

Q. Now, to the extent that Judge Marquez had found that Nogales was unlikely to adopt an override, we now know that that finding was just error?

A. They did adopt an override.

Q. Twice?

A. That's correct.

Q. Okay. Let's turn to the next page, and that gives us the M&O in Nogales?

A. Correct.

Q. Based in 2000 and you carry it on up each year to 2007?

A. That is correct.

Q. Okay. The second column is the gross dollars?

A. Well, the second column -- well, okay, yes, that's the years, that's the gross dollars, that's correct.

Q. The third column is the number of kids

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counted in Nogales?

A. That's correct.

Q. And then the fourth column, of course, is the dollars?

A. Correct.

Q. Now, Mr. Valdivia, it seems to me as though we've increased $1,262?

A. That's basically what I did in the following paragraph, I just looked at how they had increased from 2000 to 2007.

Q. And your paragraph indicates that that's an increase of about 34 percent?

A. That's correct.

Q. Is that including the override money?

A. No, it would not. I believe that's exclusive of the override money.

Q. Then let's -- this is just money the State has given or the legislature has appropriated and we're looking at Nogales's share?

A. Correct.

Q. Year by year?

A. Correct.

Q. Let's drop down to the classroom site funds. Now, this, again, is Proposition 301 that we're talking about?

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A. Correct.

Q. And we can see that in 2002 -- now, proposition -- I think Proposition 302 was adopted by the voters in 2000?

A. Correct.

Q. But it didn't kick in, it took a while to kick in?

A. That's correct.

Q. Is that why you begin with 2000?

A. That is the first year the funds were made available.

Q. Now, when you say fiscal year 2000, you're actually looking at --

A. 2002. When we say "fiscal year," when we talk about state fiscal year, we're talking about the year that it ends. So these -- when we say fiscal year 2002 we mean June 30, 2002.

Q. So approved by the voters in November of 2002, begins to kick in 2001, fiscal year ending June 30, 2002, is the first year that we have good figures?

A. Correct.

Q. Now, Mr. Valdivia, we have 1,900,000 approximately in the first year?

A. Correct.

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Q. And it goes up then to $2,337,050 in the current fiscal year?

A. Correct.

Q. Which is an increase of about $436,000 in 2007 over 2002?

A. Correct.

Q. But that 2002, that million nine, is a total increase over what had been coming in 2000?

A. Those funds were not available prior to that time.

Q. Now, we were talking about -- remember I was asking you about the casino gaming?

A. Correct.

Q. And how that money would go into the instructional improvement fund?

A. Correct.

Q. Now, we go down to the next paragraph -- drop down, scroll down a little bit, Andy. The next paragraph right below the chart.

Okay, here you tell us how much came into the instructional improvement -- or I should rephrase that. Here you tell us how much came to Nogales from the instructional improvement fund in 2006?

A. Correct.

* * *

Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 18, 2007 9:52 a.m.

[ZAMUDIO, T-6, 24:15-27:8]

Excerpt from Testimony of Guillermo V. Zamudio

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. . .

Q. Okay. And you've mentioned class size a couple of times. Does the district have class size policies or goals in place?

A. Yes, we do.

Q. Can you tell us what those are?

A. The goals -- we actually have adopted some more rigorous class size goals this year as part of trying to make an emphasis on lowering our class sizes. Twenty-five was the elementary level prior to this year and at the high school, and I believe it was 22 at the elementary, and we have changed our policies

p. 25

to reduce -- at Pearson Vocational we reduced it to 20. Because of the setting that the students were in there, we believe that we need smaller class sizes. So they range from 22 to 25.

Q. Okay. Let's go through this again because I'm not sure I heard it correctly.

A. Certainly.

Q. At the elementary school level what's the class size goal?

A. Twenty-two.

Q. At middle school?

A. At middle it would be -- I believe it's 25.

It mate be 22. I'd have to look at our --

Q. Okay. And at the high school level it's what?

A. Twenty-five.

Q. Twenty-five. Except for --

A. Except for Pearson which is 20, this year. Last year it was 25 also.

Q. Now, do those numbers represent -- is that what you're saying, is that those class size goals represent a more vigorous application or a reduction in class size from previous goals?

A. Yes, that's correct. And from last year.

In looking at what is happening with the open

p.26

enrollment and looking at the numbers, in addition we're also trying to look at what's going to happen in the future because we're having developments taking place to where our in-district students are going to grow based on the housing developments that are going in, so we're trying to manage it, as I said before. It's looking at all the variables, so we're trying to make sure that we keep

a goal, that we have a target so that when we do have the numbers that increase that we can take a look at where we can make changes.

Q. At some point with growth and with reduced class sizes you have to construct additional classrooms; right?

A. That's correct. If you continue to grow, you have to construct additional classes. At the current time we don't have a need. We do anticipate that that may happen in the future.

Q. Now, as far as class size goes, do you know what those goals that you just told us about are based on?

A. No, no, I don't know. I believe that they were based on prior. I know that I have tried to reduce the goals that we had last year, based on the fact that in my experience I've been in the classroom

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years and so I know that smaller class sizes do make a difference. I know that ideally it would be nice to have the 15 because I think that's a number that research indicates where it makes a difference.

And so but we also have to look at logistically and financially what's feasible. So I think it's more of a compromise in terms of the best class size that we can get at this point.

* * *

[ZAMUDIO, T-6, 73:13-80:20]

Excerpt from Testimony of Guillermo V. Zamudio

* * *

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. . .

Q. Okay. Now, is it your understanding based on this cost analysis that if you didn't have any English language learners in the Nogales district and they'd never been classified as English language learners, they've all been English-proficient since day one, came into the district English-proficient, that this $1,570 per student extra that Nogales has, is it your understanding that those costs would go away for Nogales?

A. Yes. Because they would -- I say yes and no, and let me explain my answer. Yes, for the most part. There are some things in here that would not be -- would go away, for

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example, the Gallileo assessment that I said. It's an academic performance instrument that we use, so that cost would still be necessary for students that were non-ELLs because we're tracking academic performance.

Q. So that's a cost you would have regardless of the fact that --

A. That is a cost that would be regardless of whether we had ELL students, but for the most part they would disappear.

Q. For example, we talked about teachers, number of teachers. Theoretically, if you didn't have any ELL students and kids who had never been ELLs, you'd be able to reduce the number of teachers you'd have; correct?

A. Yes, because we hire teachers for that particular purpose.

Q. To maintain a certain class size?

A. To maintain class size, right.

Q. You could actually have larger classes if you didn't have so many English language learners in your classroom?

A. Theoretically, that would be correct.

Q. That's not necessarily what the district would do, but that's a possibility?

A. It would be a management decision based on

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looking at your costs and trying to make the best use of your dollars and being financially prudent. That would be an alternative that would be weighed and looked at. You can increase the size of your class sizes and then in essence reduce the number of teachers that you have.

Q. There are any number of things you can do with the costs you would save?

A. Certainly.

Q. Now, go to the second page of that cost analysis for a moment. At the bottom there is a section entitled "Additional Needs" beginning at line 54.

A. Yes.

Q. By the way, before we get to that, the rest of this chart on the cost analysis indicates the source of funds for various cost categories; right?

A. That is correct.

Q. We've got M&O, we've got override, classroom site fund, on and on?

A. That's correct.

Q. You don't have anything to do with identifying the source of funds for -- that are shown on that cost sheet?

A. No, that's correct, I did not.

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Q. Ms. Soto did that?

A. That is correct. Ms. Soto does a very good job of tracking our cost and our revenues.

Q. Okay. Now, let's go back to this additional needs. Can you explain that for us?

A. Additional needs were what we listed that are above and beyond what we currently have, actual costs that would help us to further enhance our ability to help English language learners so that we can meet the goal, and so we've listed some there.

At the time we developed it there's some other costs that -- one of the things in going through the exercise that we realized are that cost studies may have to be done every year because there are some programs that we have not taken into account, for example, the AVID program that we implemented this year.

Q. Which program?

A. AVID. It's the --

Q. A-V-I-D?

A. A-V-I-D. It stands for advancement via individual determination. And we've implemented this year and it's a program that requires extra time with students, and it's a very good program that's been around for over 20 years, and the program is

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increment -- well, incremental is the word. Over time it's going to cost us more to continue to maintain the AVID program. But it's a program that's targeted specifically for helping average

students move forward in terms of their academic performance, to help meet the state standards.

So we've listed the programs at the time under these categories here.

Q. Okay. So, well, I'm just trying to figure out, is this a wish list for the district or do you believe that these are essential to the future success of your programs for ELL students?

A. We believe it's essential. We've indicated additional tutoring, we've indicated additional base pay for teachers because we felt that it's important that the teachers at least be paid average so we can attract highly qualified teachers to our district, we've indicated additional instructional aides, which would be the paraprofessionals at the elementary. The No. 12 represents one more per grade level so we have one in 2nd grade and in 3rd grade. We've indicated additional section of the instruction and that says 10, that represents the two middle schools and the two high schools. Again, paraprofessionals. We have indicated items that we believe are essential and

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necessary for us to be able to have our students learn English.

Q. Now, I assume you would say, but I'll ask you, I mean, is that true of all the other costs shown above your additional needs that resulted in the $1570?

A. There was two types in here that we listed, so not necessarily. One type was because we know we're going to lose the funding this year, like Reading First is going away, or there may be some other funding that Ms. Soto could tell you we know is not going to

be here next year, so we listed it as an additional cost to be able to support that.

So you could technically say that one is because of a reduction in funding, the others are additional funds that don't exist currently.

Q. I guess what I'm trying to get at is do you believe you're providing adequate programs and that all the costs shown in Exhibit 7 are essential to providing those programs?

A. Yes.

Q. Do you believe you have a gold-plated program?

A. No.

Q. How would you characterize it, if not

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gold-plated or excessive or extravagant or anything like that?

A. Well, based on the fact that we have costs that we're incurring and based that we have additional costs, I would say that if we're talking gold, silver and bronze, I'd classify that as a bronze-plated program.

Q. Now, these costs, these additional needs that you've just discussed for us, those don't include smaller class sizes, do they?

A. I don't believe that we had additional teachers, but I'd have to look at it to make sure. They don't.

Q. Well, what I'm trying to get at is, we talked earlier in your testimony about how the class size goals for the district are based on practical considerations? I mean, you don't have unlimited

funding to develop and implement your ELL programs; correct?

A. That's correct.

Q. You talked about research indicating that 15 was an appropriate class size and could be effective and improve the rate of English acquisition for students?

A. Yes. I believe it's important, especially

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for the first level of English learners, that you do reduce the class size. And I believe that the literature indicates that anything under 15 is effective.

Q. But that's not included here?

A. No.

Q. Why not?

A. I guess we were just not totally thinking in terms of comprehensiveness in terms of the total program. We developed this at a time trying to reflect what the costs are. We didn't have a wish list, we were trying to be reasonable. We were trying to reflect something that actually we believed is our best estimate.

Q. Something that's achievable over the reasonably near future?

A. Absolutely.

Q. Whereas reducing your class sizes to 15 might not fall into that category?

A. Correct.

* * *

[ZAMUDIO, T-6, 83-84]

Appendix I

Excerpt from Testimony of Guillermo V. Zamudio

* * *

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. . .

A. That is correct. In education.

I commend you, sir, because you've really accomplished a lot for someone who has come in and didn't have English proficiency, but you overcame it.

What I'd like to talk to you about is, to begin with, we've had a discussion of gold-plated and silver-plated and bronze-plated. To get away from jewelry, do you have an effective or an ineffective program for your ELL students?

A. I guess I would answer that question based on to what degree you define "effectiveness." I believe that we have a more effective program that still needs to be enhanced.

Q. If I understood Mr. Cooper's testimony, his goal was to have an improvement program every year. Do you remember hearing that testimony, sir?

A. I remember that, the testimony about the goals that were established.

Q. Is that your philosophy also, Dr. Zamudio, to have an improvement every year?

A. Absolutely.

Q. So you're never satisfied with last year's results, I take it? Always trying to do a little bit better the next year?

A. Never satisfied in some areas. It depends

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on -- once you've attained your goals, you may have to do a reanalysis, but I believe at some point

you would have satisfaction, you're satisfied with progress that you make.

Q. Fair enough. With your current ELL program you are -- it is an effective program, but it can become better? Have I said that right?

A. Yes, sir.

Q. I would like to talk to you for a moment, sir, about -- if you could get in front of you, please, Exhibit 7 from Mr. Hogan's book, and I'm --

Give me a moment. I have to get the other book. We have two books of exhibits.

If you could also pull together in front of you, sir, Exhibit, I believe it's 236.

Starting with Exhibit 7, Dr. Zamudio, if you go to line -- bear with me for a minute --

A. Can I ask you a question?

Q. Yes, sir.

A. Government's Exhibit 236, there's two pages. One is not marked, one is, it's the same?

THE COURT: It's a one-page exhibit, I think.

MR. CANTELME: May I approach, Your Honor, just to make sure we're on the same page?

THE COURT: Yes.

* * *

Appendix J

[EXHIBIT 7]

NOGALES UNIFIED SCHOOL DISTRICT #1
2005 - 2006 ELL COSTS

PROGRAM COMPONENT DESCRIPTION:	
Tutoring (After School) - Stipends for Teachers	
TOTAL COST:	$169,070.00
% ELL COSTS:	50.00%
TOTAL ELL COSTS:	$84,535.00
PER PUPIL AMOUNT (2474 ELL COUNT):	$34.17
M & O:	
Override:	$55,680.00
Classroom State Fund:	
***Comprehensive School Reform:	$21,170.00
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	$35,844.00
*Gear Up:	
Rural and Low Incomes:	$2,784.00
***Smaller Learning	$5,568.00

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Communities:

Title I - School Improvement:

Title I: $48,024.00

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Tutoring (After School) - Transportation Costs

TOTAL COST:	$17,211.75
% ELL COSTS:	50.00%
TOTAL ELL COSTS:	$8,605.88
PER PUPIL AMOUNT (2474 ELL COUNT):	$3.48

M & O:

Override: $17,211.75

Classroom State Fund:

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***Comprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

**Full Day Kinder:

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I:

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

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Tutoring (Extended Day) - Stipends for Teachers (NHS)

TOTAL COST:	$16,704.00
% ELL COSTS:	50.00%
TOTAL ELL COSTS:	$8,352.00
PER PUPIL AMOUNT (2474 ELL COUNT):	$3.38
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	$16,704.00
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	
Title II:	
Title III:	

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Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Tutoring for ELL students (After School) - Stipends for Teachers

TOTAL COST:	$21,576.00
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$21,576.00
PER PUPIL AMOUNT (2474 ELL COUNT):	$8.72

M & O:

Override:

Classroom State Fund:

***Comprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

**Full Day Kinder:

Appendix J

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:	$21,576.00

Title I:

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

SEI instruction for ELL students - Computers, Projectors & Smartboards for SEI instruction

TOTAL COST:	$84,557.91
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$84,557.91
PER PUPIL AMOUNT (2474	$34.18

ELL COUNT):	
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$84,557.91
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

SEI Instruction for ELL Students - Instructional Materials and Supplies (Site Allocations)

TOTAL COST:	$43,450.02
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$43,450.02
PER PUPIL AMOUNT (2474 ELL COUNT):	$17.56
M & O:	$1,622.88
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	$1,834.30
**Early Childhood:	$5,625.65
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	

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*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$3,624.00
Title II:	
Title III:	$30,743.19
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

SEI / ELL Tuition Reimbursement for Teachers /Paraprofessionals

TOTAL COST:	$8,099.60
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$8,099.60
PER PUPIL AMOUNT (2474	$3.27

ELL COUNT):	
M & O:	
Override:	
Classroom State Fund:	$4,051.60
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$4,048.00
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

SEI / ELL Training - Conference Registration Fees and Travel Costs

TOTAL COST:	$6,363.98
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$6,363.98
PER PUPIL AMOUNT (2474 ELL COUNT):	$2.57
M & O:	$59.50
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	$169.90

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*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	$509.70
Title I:	$1295.92
Title II:	
Title III:	$4,328.96
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

SEI / ELL Training - Stipends for Teachers/ Trainers

TOTAL COST:	$11,020.00
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$11,020.00
PER PUPIL AMOUNT (2474 ELL COUNT):	$4.45

M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	$6,960.00
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$4,060.00
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

SEI / ELL Training - Consultant to provide training for teachers

TOTAL COST:	$15,418.67
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$15,418.67
PER PUPIL AMOUNT (2474 ELL COUNT):	$6.23

M & O:

Override:

Classroom State Fund:

***Comprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

**Full Day Kinder:

*Reading First:

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*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$15,418.67
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

SEI / ELL Training - Substitutes for teachers attending training

TOTAL COST:	$833.04
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$833.04
PER PUPIL AMOUNT (2474 ELL COUNT):	$0.34

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M & O:

Override:

Classroom State Fund:

***Comprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

**Full Day Kinder:

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I:

Title II:

Title III: $833.04

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

SEI / ELL Training - Supplies and Materials for teachers (Site Allocations)

TOTAL COST:	$1,984.00
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$1,984.00
PER PUPIL AMOUNT (2474 ELL COUNT):	$0.80
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	

Appendix J

*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	
Title II:	
Title III:	$1,984.00
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Indirect Costs Title III

TOTAL COST:	$5,343.17
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$5,343.17
PER PUPIL AMOUNT (2474 ELL COUNT):	$2.16
M & O:	

Appendix J

Override:

Classroom State Fund:

** nprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

**Full Day Kinder:

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I:

Title II:

Title III: $5,343.17

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

Appendix J

PROGRAM COMPONENT DESCRIPTION:

Mentoring program (district wide) - Consultant Fee & Stipend for Teacher Mentor Coordinator

TOTAL COST:	$28,883.69
% ELL COSTS:	40.65%
TOTAL ELL COSTS:	$11,741.22
PER PUPIL AMOUNT (2474 ELL COUNT):	$4.75
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$17,400.00

Title II:	$11,483.69
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Parent Involvement Components/Site & District Allocations

TOTAL COST:	$69,651.51
% ELL COSTS:	30.00%
TOTAL ELL COSTS:	$20,895.45
PER PUPIL AMOUNT (2474 ELL COUNT):	$8.45
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	

Appendix J

*ELL Instructional Materials:

**Full Day Kinder:

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I: $69,651.51

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Mileage reimbursement for language acquisition coordinator and compliance consultants to visit school sites

TOTAL COST: $477.48

% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$477.48
PER PUPIL AMOUNT (2474 ELL COUNT):	$0.19
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	
Title II:	
Title III:	$477.48
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Reading 1st Program - Supplemental Instructional Materials

TOTAL COST:	$399,901.46
% ELL COSTS:	40.65%
TOTAL ELL COSTS:	$162,559.94
PER PUPIL AMOUNT (2474 ELL COUNT):	$65.71
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	$399,901.46

Appendix J

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I:

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - Parent Liaisons 7.0 FTE

TOTAL COST:	$165,837.72
% ELL COSTS:	30.00%
TOTAL ELL COSTS:	$49,751.32
PER PUPIL AMOUNT (2474 ELL COUNT):	$20.11

M & O:

Appendix J

Override:

Classroom State Fund:

***Comprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

**Full Day Kinder:

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I: $165,837.72

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

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PROGRAM COMPONENT DESCRIPTION:

Salaries - Computer Lab Specialists 9.0 FTE

TOTAL COST:	$169,307.30
% ELL COSTS:	30.00%
TOTAL ELL COSTS:	$50,792.19
PER PUPIL AMOUNT (2474 ELL COUNT):	$20.53
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	$4,405.36
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$164,901.94
Title II:	

Appendix J

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - Data & Assessment Director

TOTAL COST:	$55,932.99
% ELL COSTS:	40.65%
TOTAL ELL COSTS:	$22,736.76
PER PUPIL AMOUNT (2474 ELL COUNT):	$9.19

M & O:

Override:

Classroom State Fund:

***Comprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

Appendix J

**Full Day Kinder:

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I: $55,932.99

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - District Computer Technician

TOTAL COST:	$49,491.49
% ELL COSTS:	40.65%
TOTAL ELL COSTS:	$20,118.29

Appendix J

PER PUPIL AMOUNT (2474 ELL COUNT):	$8.13
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$49,491.49
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - Teachers providing SEI instruction (K-12)

TOTAL COST:	$12,493,695.03
% ELL COSTS:	10.00%
TOTAL ELL COSTS:	$1,249,369.50
PER PUPIL AMOUNT (2474 ELL COUNT):	$505.00
M & O:	$11,229,598.43
Override:	$142,655.12
Classroom State Fund:	$454,991.88
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	$308,417.91
*Reading First:	

Appendix J

*Gear Up:	
Rural and Low Incomes:	$33,506.54
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$230,751.53
Title II:	$93,733.63
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - Instructional Aides (K-5)

TOTAL COST:	$755,520.93
% ELL COSTS:	30.00%
TOTAL ELL COSTS:	$226,656.28
PER PUPIL AMOUNT (2474 ELL COUNT):	$91.62

Appendix J

M & O:	$480,777.04
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	$77,974.14
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	$74,477.22
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$122,292.54
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - Counselors (6-12) 9.0 FTE

TOTAL COST:	$525,848.41
% ELL COSTS:	50.00%
TOTAL ELL COSTS:	$262,924.21
PER PUPIL AMOUNT (2474 ELL COUNT):	$106.27
M & O:	$525,848.41
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	

Appendix J

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I:

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - Intervention Specialists (K-5) 6.0 FTE

TOTAL COST:	$223,704.15
% ELL COSTS:	50.00%
TOTAL ELL COSTS:	$111,852.08
PER PUPIL AMOUNT (2474 ELL COUNT):	$45.21

Appendix J

M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$223,704.15
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - Literacy and Language Acquisition Department-1.0 FTE Director (incl contract extension for summer); 5.0 FTE Compliance Consultants/ELL Data Technicians + 13 SEI Site Specialists Stipends

TOTAL COST:	$165,366.42
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$165,366.42
PER PUPIL AMOUNT (2474 ELL COUNT):	$66.84
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	

Appendix J

*ELL Instructional Materials:

**Full Day Kinder:

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I: $42,627.68

Title II:

Title III: $122,738.74

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - Reading 1st Program: Reading Interventionists, Reading Coaches, Assessment Coordinators

TOTAL COST: $414,191.32

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% ELL COSTS:	30.00%
TOTAL ELL COSTS:	$124,257.40
PER PUPIL AMOUNT (2474 ELL COUNT):	$50.23
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	$414,191.32
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - Reading Specialists (K-12)

TOTAL COST:	$418,551.72
% ELL COSTS:	70.00%
TOTAL ELL COSTS:	$292,986.20
PER PUPIL AMOUNT (2474 ELL COUNT):	$118.43

M & O:

Override:

Classroom State Fund:

***Comprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

**Full Day Kinder:

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I: $418,551.72

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Salaries - Teachers teaching ELL classes (1 @ SCAHS, 3 @ NHS, 13 sections @ DSMS, 9 sections @ WCMS)

TOTAL COST:	$303,315.72
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$303,315.72
PER PUPIL AMOUNT (2474	$122.60

Appendix J

ELL COUNT):	
M & O:	$270,261.19
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	$33,054.53
Title I:	
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Stipends for Certified Staff - ELL Facilitator

TOTAL COST:	$5,568.00
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$5,568.00
PER PUPIL AMOUNT (2474 ELL COUNT):	$2.25
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	$5,568.00
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	

Appendix J

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I:

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Stipends for Certified Staff - ELL Intervention Coordinators

TOTAL COST:	$2,320.00
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$2,320.00
PER PUPIL AMOUNT (2474 ELL COUNT):	$0.94

Appendix J

M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$2,320.00
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Stipends for Certified Staff - Bilingual Endorsement

TOTAL COST:	$237,145.07
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$237,145.07
PER PUPIL AMOUNT (2474 ELL COUNT):	$95.85
M & O:	$237,145.07

Override:

Classroom State Fund:

***Comprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

**Full Day Kinder:

Appendix J

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I:

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Stipends for Certified Staff - Recruitment/Retention Incentive (Override)

TOTAL COST:	$494,645.70
% ELL COSTS:	10.00%
TOTAL ELL COSTS:	$49,464.57

PER PUPIL AMOUNT (2474 ELL COUNT):	$19.99
M & O:	
Override:	$494,645.70
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Stipends for Certified Staff - Translators, Interpreters

TOTAL COST:	$4,060.00
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$4,060.00
PER PUPIL AMOUNT (2474 ELL COUNT):	$1.64
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	

Appendix J

*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	$580.00
Title I - School Improvement:	$1,160.00
Title I:	$2,320.00
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Student Assessment - Data Management System (Turnleaf)

TOTAL COST:	$21,661.00
% ELL COSTS:	40.65%
TOTAL ELL COSTS:	$8,805.20

PER PUPIL AMOUNT (2474 ELL COUNT):	$3.56
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$21,661.00
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Student Assessment - Benchmark Program (Gallileo)

TOTAL COST:	$50,366.28
% ELL COSTS:	40.65%
TOTAL ELL COSTS:	$20,473.89
PER PUPIL AMOUNT (2474 ELL COUNT):	$8.28

M & O:

Override:

Classroom State Fund:

***Comprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

**Full Day Kinder:

Appendix J

*Reading First:

*Gear Up:

Rural and Low Incomes:

***Smaller Learning Communities:

Title I - School Improvement:

Title I: $50,366.28

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Student Assessment - Supplies and Materials for student placement and ELL standards monitoring (incl. District SELP Assessments & training costs)

TOTAL COST: $40,240.26

% ELL COSTS: 100.00%

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TOTAL ELL COSTS:	$40,240.26
PER PUPIL AMOUNT (2474 ELL COUNT):	$16.27
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	
Title II:	
Title III:	$40,240.26
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Summer Camp (Math & Science) - Supplemental instructional materials and field trips

TOTAL COST:	$10,507.62
% ELL COSTS:	30.00%
TOTAL ELL COSTS:	$3,152.29
PER PUPIL AMOUNT (2474 ELL COUNT):	$1.27
M & O:	
Override:	$225.00
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	

Appendix J

*Reading First:	
*Gear Up:	
Rural and Low Incomes:	$8,525.50
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	
Title II:	
Title III:	
Title IV:	$1,757.12

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Summer Camp (Math & Science) - Stipends for Teachers/Lead Teacher

TOTAL COST:	$9,471.53
% ELL COSTS:	30.00%
TOTAL ELL COSTS:	$2,841.46

Appendix J

PER PUPIL AMOUNT (2474 ELL COUNT):	$1.15
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	$2,309.79
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	
Title II:	
Title III:	
Title IV:	$7,161.74

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Summer School Sheltered Instruction for ELL Students - Stipends for teachers, Reading Specialists, ESL Interventionists, Instructional Aides, Speech Pathologists

TOTAL COST:	$72,640.39
% ELL COSTS:	100.00%
TOTAL ELL COSTS:	$72,640.39
PER PUPIL AMOUNT (2474 ELL COUNT):	$29.36
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	$3,329.25
*ELL Instructional Materials:	

Appendix J

**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	$26,357.41
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	
Title II:	
Title III:	$42,953.73
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Summer School Sheltered Instruction for ELL Students - Supplies and Materials

TOTAL COST:	$24,135.83
% ELL COSTS:	100.00%

Appendix J

TOTAL ELL COSTS:	$24,135.83
PER PUPIL AMOUNT (2474 ELL COUNT):	$9.76
M & O:	
Override:	
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	$7,002.97
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	
Title II:	
Title III:	$17,132.86
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Summer School - Stipends for Teachers; Readings Teachers/Interventionists; Instructional Aides; Counselors

TOTAL COST:	$187,063.95
% ELL COSTS:	10.00%
TOTAL ELL COSTS:	$18,706.40
PER PUPIL AMOUNT (2474 ELL COUNT):	$7.56
M & O:	
Override:	$64,618.10
Classroom State Fund:	
***Comprehensive School Reform:	$13,920.00
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	

*Reading First:	$46,284.00
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$62,241.85
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Summer School - Materials and Supplies

TOTAL COST:	$40,254.81
% ELL COSTS:	10.00%
TOTAL ELL COSTS:	$4,025.48
PER PUPIL AMOUNT (2474	$1.63

Appendix J

ELL COUNT):	
M & O:	
Override:	$7,243.88
Classroom State Fund:	
***Comprehensive School Reform:	
**Early Childhood:	
*ELL Compensatory Ed:	
*ELL Instructional Materials:	
**Full Day Kinder:	
*Reading First:	
*Gear Up:	
Rural and Low Incomes:	
***Smaller Learning Communities:	
Title I - School Improvement:	
Title I:	$33,010.93
Title II:	
Title III:	
Title IV:	

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

Summer School - Transportation

TOTAL COST:	$38,620.05
% ELL COSTS:	40.65%
TOTAL ELL COSTS:	$15,699.05
PER PUPIL AMOUNT (2474 ELL COUNT):	$6.35

M & O:

Override:

Classroom State Fund:

***Comprehensive School Reform:

**Early Childhood:

*ELL Compensatory Ed:

*ELL Instructional Materials:

**Full Day Kinder:

*Reading First:

Appendix J

*Gear Up:

Rural and Low Incomes: $38,620.05

***Smaller Learning Communities:

Title I - School Improvement:

Title I:

Title II:

Title III:

Title IV:

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM COMPONENT DESCRIPTION:

GRAND TOTAL

TOTAL COST: $17,880,009.99

% ELL COSTS:

TOTAL ELL COSTS: $3,885,217.61

PER PUPIL AMOUNT (2474 ELL COUNT): $1,570.42

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M & O:	$12,745,312.52
Override:	$782,279.55
Classroom State Fund:	$459,043.48
***Comprehensive School Reform:	$42,492.30
**Early Childhood:	$83,599.79
*ELL Compensatory Ed:	$3,329.25
*ELL Instructional Materials:	$7,002.97
**Full Day Kinder:	$382,895.13
*Reading First:	$896,390.68
*Gear Up:	$16,704.00
Rural and Low Incomes:	$123,468.64
***Smaller Learning Communities:	$6,148.00
Title I - School Improvement:	$56,300.23
Title I:	$1,894,091.83
Title II:	$105,257.32
Title III:	$266,775.43
Title IV:	$8,918.86

***Only carryover available in 2006-2007 (Comprehensive School Reform, Smaller Learning Communities)

**Reduction in Funding for Future years (Early Childhood, Full Day Kinder, Title III, Title V)

*Not Available for Future years (ELL Compensatory Ed, ELL Instructional Materials, Gear Up, Reading First)

PROGRAM/COMPONENT DESCRIPTION **Additional Needs:**	
TOTAL COST	N/A
% ELL COSTS	N/A
TOTAL ELL COSTS	N/A
PER PUPIL AMOUNT (2474 ELL COUNT)	N/A

PROGRAM/COMPONENT DESCRIPTION **Additional Funds for After school Tutoring, Compensatory Ed. & Summer School (due to reduction in funding)**	
TOTAL COST	$80,000.00

% ELL COSTS	10.00%
TOTAL ELL COSTS	$80,000.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$32.34

PROGRAM/COMPONENT DESCRIPTION **Additional Funds for Increasing Certified Staff Base Pay ($4,000)**	
TOTAL COST	$1,640,100.00
% ELL COSTS	100.00%
TOTAL ELL COSTS	$164,010.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$66.29

PROGRAM/COMPONENT DESCRIPTION **Additional Funds to retain Instructional Aides (due to reduction in funding)**	
TOTAL COST	$150,000.00
% ELL COSTS	30.00%

TOTAL ELL COSTS	$45,000.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$18.19

PROGRAM/COMPONENT DESCRIPTION **Additional Instructional Aides (12)**	
TOTAL COST	$216,000.00
% ELL COSTS	30.00%
TOTAL ELL COSTS	$64,800.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$26.19

PROGRAM/COMPONENT DESCRIPTION **Additional Materials to support ELL program (+10%)**	
TOTAL COST	$47,000.00
% ELL COSTS	100.00%
TOTAL ELL COSTS	$47,000.00
PER PUPIL AMOUNT	$19.00

(2474 ELL COUNT)	

PROGRAM/COMPONENT DESCRIPTION **Additional sections for ELL instruction (10)**	
TOTAL COST	$56,230.00
% ELL COSTS	100.00%
TOTAL ELL COSTS	$56,230.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$22.73

PROGRAM/COMPONENT DESCRIPTION **Additional SEI trainers**	
TOTAL COST	$11,000.00
% ELL COSTS	100.00%
TOTAL ELL COSTS	$11,000.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$4.45

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PROGRAM/COMPONENT DESCRIPTION **Additional Staff for Literacy & Language Acquisition Department (Language Assessment, Data Processing & Analysis) 3.0 FTE**	
TOTAL COST	$54,000.00
% ELL COSTS	100.00%
TOTAL ELL COSTS	$54,000.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$21.83

PROGRAM/COMPONENT DESCRIPTION **Funds for ELL model implementation (unknown)**	
TOTAL COST	N/A
% ELL COSTS	100.00%
TOTAL ELL COSTS	$0.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$0.00

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PROGRAM/COMPONENT DESCRIPTION **Instructional Software & Hardware for ELL Curriculum**	
TOTAL COST	$202,000.00
% ELL COSTS	100.00%
TOTAL ELL COSTS	$202,000.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$81.65

PROGRAM/COMPONENT DESCRIPTION **Professional Development for Literacy & Language Acquisition Department Staff**	
TOTAL COST	$8,000.00
% ELL COSTS	100.00%
TOTAL ELL COSTS	$8,000.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$3.23

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PROGRAM/COMPONENT DESCRIPTION **Professional Development for Teachers on Sheltered Instruction Techniques (+10%)**	
TOTAL COST	$5,000.00
% ELL COSTS	100.00%
TOTAL ELL COSTS	$5,000.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$2.02

PROGRAM/COMPONENT DESCRIPTION **N/A**	
TOTAL COST	$2,469,330.00
% ELL COSTS	N/A
TOTAL ELL COSTS	$737,040.00
PER PUPIL AMOUNT (2474 ELL COUNT)	$297.91

Appendix J

[EXHIBIT 206]

CURRICULAR FRAMEWORK FOR PROVISIONAL STRUCTURED ENGLISH IMMERSION (SEI) ENDORSEMENT TRAINING (15 HOURS)

At the end of 15 hours* of instruction, participants will be able to:

ELL Proficiency Standards Objections

***Minimum:** One (1) clock Hour*

1. Examine the format and alignment of ELL Proficiency Standards to the Arizona Language Arts (Listening & Speaking, Reading, and Writing) Academic Standards.

2. Use ELL Proficiency Standards to plan, deliver and evaluate instruction.

3. Demonstrate the integration of ELL Proficiency Standards in all content areas.

Assessment Objectives

Minimum: One (1) Clock Hour

Analyze the content and use of the Arizona English Language Learner Assessment (AzELLA) in guiding ELL instruction.

2. Discuss the relevance of state-mandated achievement for ELLs.

3. Identify and use alternative methods of assessment.

Foundations of SEI Objectives

Minimum: *One (1) Clock Hour*

1. Know the legal, historical and educational reasons for SEI.

2. Know basic SEI terminology.

3. List language acquisition theoretical principles.

4. Define the role of culture in learning.

SEI Strategies Objectives

Minimum: *Eight (8) Clock Hours*

1. Identify and use multiple strategies to improve student achievement.

Integrate:

- Comprehensible input;
- Ongoing specific and immediate feedback;
- Grouping structures and techniques;
- Building background and vocabulary development; and
- Student engagement.

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Training time must total 15 clock hours, which includes four (4) flex clock hours to be used at the instructor's discretion to augment any combination of the four areas.

CURRICULAR FRAMEWORK FOR FULL STRUCTURED ENGLISH IMMERSION (SEI) ENDORSEMENT TRAINING (45 CLOCK HOURS)

SBE approved 1/24/2005

At the end of 45 clock hours* of instruction, participants will be able to:

ELL Proficiency Standards Objectives

Minimum: *One Clock Hour*

1. Examine the format and the alignment of ELL Proficiency Standards to the Arizona Language Arts (Listening & Speaking, Reading and Writing) Academic Standards.

2. Use ELL Proficiency Standards to plan, deliver and evaluate instruction.

3. Demonstrate the integration of ELL Proficiency Standards in all content areas.

Data Analysis & Application Objectives

Minimum: *Three Clock Hours*

1. Analyze and apply disaggregated data to differentiate instruction.

2. Interpret and use "snapshots" of longitudinal data.

3. Track student status and progress on the ELL proficiency standards using the Arizona English Language Learner Assessment (AzELLA) results.

Formal & Informal Assessment Objectives

Minimum: *Three Clock Hours*

1. Integrate diagnostic formative, and summative assessments for ELLs.

2. Create and offer multiple assessments.

3. Use assessment results for placement and accommodation for special education and gifted students.

4. Use standardized testing and language proficiency as methods for monitoring student progress.

SEI Foundations Objectives

Minimum: *One Clock Hour*

1. Know the legal, historical and educational reasons for Structured English Immersion (SEI).

2. Know basic SEI terminology.

3. List language acquisition theoretical principles.

4. Outline the role of culture in learning.

5. Introduce Basic Interpersonal Communication Skills (BICS) and Cognitive Academic Language Proficiency (CALP).

Learning Experiences SEI Strategies Objectives

Minimum: *25 Clock Hours*

1. Identify and use multiple strategies to improve student achievement.

Integrate:

- Comprehensible input;
- Ongoing specific and immediate feedback;
- Grouping structures and techniques;
- Building background and vocabulary development; and
- Student engagement.

2. Extend SEI methods for beginning ELD (TPR Storytelling), contextual clues, Narrative Approach).

3. Describe the Silent Period (ways of responding, developmental processes).

4. Grasp meaning of pre-and early production strategies of students.

5. Integrate current materials in ELD instruction (lesson & text modifications).

6. Extend SEI content methods (preview/ review, content area reading & writing strategies, experiential methods.

7. Analyze and apply vocabulary development approaches in the content areas.

8. Plan lessons based on prior knowledge.

9. Select, adapt, and sequence current curricular materials.

Parent/Home/School Scaffolding Objectives

Minimum: *Three Clock Hours*

1. Identify the socio-cultural influences of ELLs (language shift, identity issues, role of culture in learning).

2. Discuss the impact of bilingualism and home language use.

3. Examine parental and community sources for aiding English Acquisition.

4. Cultivate home and school partnerships.

****Training time must total 45 clock hours, which includes nine (9) flex clock hours to be used at the instructor's discretion to augment any combination of the four areas.***

Law Regarding SEI Endorsement

Appendix J

15-756.09. Teacher training

A. The state board of education shall determine the qualifications necessary for a provisional and full structured English immersion endorsement.

B. Training may be allowed that is not provided by a college or university to substitute for any of the courses required for a structured English immersion endorsement or a bilingual education endorsement if all of the following conditions apply:

1. The state board of education has reviewed the curricula, textbooks, grading procedures and attendance policies and determined that the training is comparable in amount, scope and quality to a course offered by a college or university for a structured English immersion or bilingual education endorsement.

2. The training meets the professional teaching standards adopted by the state board of education.

3. The state board of education has reviewed the qualifications of the instructor and determined that the instructor has sufficient experience to effectively conduct the training.

C. The state board of education shall require all approved teacher training programs that provide a degree in education to require courses that are necessary to obtain a full structured English immersion endorsement.

15- 1626. SEC. 16 General administrative powers and duties of board

16. Require universities that provide a degree in education to require courses that are necessary to obtain a provisional structured English immersion endorsement as prescribed by the state board of education.

R7-2-613. Endorsements

J. Structured English Immersion (SEI) Endorsements -- grades K-12

1. From and after August 31, 2006, an SEI, ESL or bilingual endorsement is required of all classroom teachers, supervisors, principals and superintendents. For purposes of this rule, "supervisor," "principal" and "superintendent" means an individual who holds a supervisor, principal or superintendent certificate.

2. The provisional SEI endorsement is valid for three years and is not renewable. The requirements are:

a. An Arizona elementary, secondary, special education, career and technical education, supervisor, principal or superintendent certificate; and

b. For teachers, supervisors, principals and superintendents certified on or after August 31,

2006, three semester hours of courses in Structured English immersion methods of teaching English Language Learner (ELL) students, including but not limited to instruction in SEI strategies, teaching with the ELL Proficiency Standards adopted by the Board and monitoring ELL student academic progress using a variety of assessment tools; or

c. For teachers, supervisors, principals and superintendents certified before August 31, 2006, one semester hour or 15 clock hours of professional development in Structured English Immersion methods of teaching ELL students, including but not limited to instruction in SEI strategies, teaching with the ELL Proficiency Standards adopted by the Board and monitoring ELL student academic progress using a variety of assessment tools through a training program that meets the requirements of A.R.S. § 15-756.09(B).

3. The requirements for the SEI endorsement are:

a. An Arizona elementary, secondary, special education, career and technical education, supervisor, principal, or superintendent certificate, and;

b. Qualification for the provisional SEI endorsement, and either:

i. Three semester hours of courses related to the teaching of the English Language Learner Proficiency Standards adopted by the State Board of Education, including but not limited to instruction in SEI strategies, teaching with the ELL Proficiency

Standards adopted by the Board and monitoring ELL student academic progress using a variety of assessment tools; or

ii. Completion of 45 clock hours of professional development in the teaching of the English Language Learner Proficiency Standards adopted by the State Board of Education, including but not limited to instruction in SEI strategies, teaching with the ELL Proficiency Standards adopted by the Board and monitoring ELL student academic progress using a variety of assessment tools through a training program that meets the requirements of A.R.S. § 15-756.09(B).

4. Nothing in this rule prevents school districts from requiring certified staff to obtain an ESL or bilingual endorsement as a condition of employment.

Appendix J

[EXHIBIT 209]

District Monitoring

- The Monitoring process was previously directed by Board Rule R7-2-306 (Flores Consent)

- On September 21, 2006, A.R.S. 15-756.08 (HB 2064) replaced R7-2-306 and became the new mandate for the monitoring process. (See attachment)

Appendix J

Arizona State Legislature

Forty-eighth Legislature - First Regular Session

15-756.08. Monitoring; corrective action plan

A. The superintendent of public instruction shall direct the office of English language acquisition services in the department of education to:

1. Monitor each year at least twelve school districts or charter schools from the fifty school districts or charter this state with the highest number of English language learners. The department of education shall monitor all fifty school districts or charter schools with the highest number of English language learners in this state at least once every four years.

2. Monitor each year at least ten school districts or charter schools that are not included in the fifty school districts or charter schools described in paragraph 1.

3. Monitor each year at least ten school districts or charter schools that are not required to provide instruction for English language learners for a majority of their grade levels.

4. Choose, based on the department's review of reports submitted by school districts and charter schools, the school districts and charter schools described in paragraphs 1, 2 and 3.

5. Select a random sample of three hundred English language learners each month to determine:

(a) How many of the sample can read the randomly ordered alphabet in thirty seconds or less.

(b) How many of the sample can read a randomly sorted list of thirty single-syllable words in one minute or less.

B. The monitoring required by this section shall be on-site monitoring and shall include classroom observations, curriculum reviews, faculty interviews, student records, a review of English language learner programs and an analysis of programmatic effectiveness, at a minimum, to include prior year data that analyze the progress of English language learners.

C. Based on the results of the monitoring, the department shall determine whether or not the school district or charter school is complying with state and federal laws applicable to English language learners.

D. The department shall issue a report of the results of the monitoring within forty-five days after completing the monitoring.

E. Within sixty days following the issuance of the department's report, the school district or charter school receiving the report shall prepare and submit to the department a corrective action plan, in a manner prescribed by the state board of education, that sets forth steps that will be taken to correct the deficiencies, if any, noted in the department's report.

F. Within thirty days after receiving a school district's or charter school's corrective action plan, the department shall review the corrective action

plan and may require changes to the corrective action plan.

G. After the department has reviewed a school district's or charter school's corrective action plan and made any changes the department deems necessary, the department shall return the corrective action plan to the school district or charter school.

H. Within thirty days after receiving a corrective action plan back from the department, the school district or charter school shall begin implementing the measures set forth in the corrective action plan.

I. The department shall conduct a follow-up evaluation of the school district or charter school within one year after the department returned the corrective action plan to the school district or charter school.

J. In conducting the follow-up evaluation, if the department finds that the school district or charter school is not in compliance with state and federal laws applicable to English language learners, the department shall refer the school district or charter school to the state board of education for a finding of noncompliance. A school district or charter school found by the board to be noncompliant shall not continue to receive any monies from the Arizona structured English immersion fund established by section 15-756.04 for English language learners and shall not reduce the amount of monies spent on the school district's or charter school's English language

learner programs despite the loss of monies caused by the noncompliance.

K. The department shall monitor each school district or charter school that the state board of education has found to be noncompliant and that is not receiving Arizona structured English immersion fund monies pursuant to subsection J of this section to ensure that the school district or charter school does not reduce the amount of monies spent on the school district's or charter school's English language learner programs despite the loss of Arizona structured English immersion fund monies caused by the noncompliance.

Overview of 2005 — 2006 Monitoring Results

All monitoring for the 2005-2006 year was completed based on the state board of education rule R7-2-306, which is posted below.

R7-2-306

J. Monitoring of ELL programs.

1. Each year the department shall monitor at least 32 LEAs, as follows:

a. At least 12 of the 50 LEAs with the highest enrollment:

b. At least 10 LEAs with ELLs that are not included in the 50 described above.

c. At least 10 LEAs that have reported that they have 25 or fewer ELL students in their schools; and

d. Other LEAs upon receipt of a documented written complaint form any Arizona resident, the

U.S. Department of Education, or the U.S. Office for Civil Rights, alleging that the LEA is not complying with state of federal law regarding ELLS.

2. All of the 50 LEAs in subsection (J)(1)(a) shall be monitored by the Department at least once every four years.

3. The monitoring shall be on-site monitoring and shall include classroom observations, curriculum reviews, faculty interviews, student records reviews, and review of ELL programs. The Department may use personnel from other schools to assist in the monitoring.

4. The Department shall issue a report on the results of its monitoring within 45 days after completing the monitoring. If the Department determines that an LEA is not complying with state or federal laws applicable to ELL students, the LEA shall prepare and submit to the Department, within 60 days of the Department's determination, a corrective action plan that sets forth steps that the LEA will take to correct the deficiencies noted in the report.

5. The Department shall review and return such corrective action plan to the LEA within 30 days, noting any required changes. No later than 30 days after receiving its corrective action plan back form the Department, the LEA shall begin implementing the measures set forth in the plan, including any revisions required by the Department.

6. The Department shall conduct a follow-up evaluation of the LEA within one year after returning the corrective action plan to the LEA.

7. If the Department finds continued non-compliance during the follow-up evaluation, the LEA shall be revered to the Board for a determination of non-compliance. If the Board determines the LEA to be out of compliance with state or federal laws applicable to ELL students, it may take one or more of the following actions:

a. Temporarily withhold cash payments of federal ELL grant monies;

b. Disallow (that is deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

c. Wholly or partly suspend or terminate the current award of federal ELL grant monies;

d. Withhold further awards of federal ELL grant monies for the program.

8. the Department shall monitor all LEAs that the Board has determined to be non-compliant and which have had federal ELL grant monies withheld or terminated to ensure that such LEAs do not reduce the amount of funds spent on their ELL programs as the result of its loss of funds.

* * *

Appendix J

[EXHIBIT 214]

Nogales Unified School District Report

March 14 - 15, 2006

The English Acquisition Services (EAS) unit conducted a visit to the Nogales Unified District to gather information regarding the various schools within the district. The Arizona Department of Education (ADE) Research and Evaluation unit completed a list of schools, whose English Language Learner (ELL) student count was over 100; whose students were classified as ELL in 2003, and; the list gave a rank order of the percentage of ELL students that passed the AIMS assessment in 2005. The list consisted of 628 schools within the state of Arizona. Nogales Unified District had four schools within the top 10 ranked schools; five schools within the top 50 ranked schools in Arizona.

The EAS unit visited each school within the Nogales district to review class sizes, teacher/pupil ratios, paraprofessional ratios, ELL programs, curriculum utilization across all content areas, conduct teacher interviews and administration interviews. EAS also reviewed parent-community involvement/activities, professional development information, technology within classrooms, tutoring services and each individual's view of why they believe the students at the school are successful. An interview with Superintendent Zamudio provided the team with information regarding the Nogales School District. The district student population currently is

approximately 98% Hispanic and 75+% are considered ELL, with 518 kindergarten students identified as ELL.

The team determined that there were **four** main components that each school had in common that contribute to student success:

1. The first component was the intervention and extra support services that the schools are implementing during their reading and language blocks for all students, based on proficiency levels of the students.

2. The second component is that each school offers mainstream classrooms and Structured English Immersion (SEI) classes for the ELL students during their reading and language blocks with additional support for the acquisition of the English language.

3. The third component was the tutoring and additional support services the schools were offering students before, after, during summer school for students who are not achieving at grade level.

4. The last component was the implementation of the Gallileo, which is an assessment and data system which allows each teacher analyze the student and classroom achievement on the academic standards and to focus on areas that are weak, or need additional teaching and support.

Each school has no paraprofessionals designated specifically for SEI classrooms. Each school also has minimal technology within the classrooms, with a computer available for each

teacher, but very few within classrooms for student use. Each school does have computer labs available for student use. The schools are using a variety of curriculum. The following information is broken down by each school, with specific focus on the eleven areas the team reviewed: 1) School; ranking; % passed on AIMS; 2) average student population within each classroom; 3) Number of paraprofessionals observed in classrooms; 4) Curriculum utilized in classrooms; 5) Type of data utilized; 6) Technology available within classrooms; 7) Intervention and support services offered; 8) Tutoring services available; 9) Parent involvement with the school; 10) Professional development available for teachers; 11) What student success is attributed to.

Vasquez De Coronado Francisco School

Ranking: #3 ELL#: 637 %Passed in '05: 78.06

2. Average classroom population: 28

3. Paraprofessionals: None.

4. Curriculum: Houghton-Mifflin > Reading
Saxon > Math
SRA (Real) > Science
(additional) Blast-off > Reading/Writing/Math
(AIMS support)
(supplemental) > Steck Vaughn (enrichment)

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Students are grouped for reading blocks; the lowest reading groups have additional intervention during the day.

5. Data utilized: AIMS; Terra Nova; NWEA; Writing Samples using ADE 6 Trait Rubric; Gallileo

6. Technology in classrooms is minimal; only teachers have computers. Students have computer lab once a week. Teachers use overhead projectors and videos to assist lessons.

7. Lowest reading groups receive additional intervention support during the day.

8. Tutoring is scheduled for before, after and summer school.

9. Parent involvement includes parent-teacher conferences, open house, bake sales by PTA. Grades are on-line and students take weekly work home for parents to sign and return to teachers, which allows parents to know what their child completes each week.

10. Professional development: SEI, 6 Trait Writing, Gallileo data training, technology training.

11. Success was attributed to principal-teacher teamwork, lessons aligned to state standards and parent involvement.

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Robert Bracker Elementary
Ranking: #4 ELL#: 291 %Passed in '05: 75.94

2. Average classroom population: 20

3. Paraprofessionals: None.

4. Curriculum:

	Harcourt Trophies >	Reading
	Saxon >	Math
	Social Studies >	up for adoption (Arizona)
	Science >	up for adoption (interactive - Windows)

(additional) Blast-off > Reading/Math/Writing (AIMS support)
(supplemental) > ELL Resource Kits (intervention)

Core language blocks are 90 minutes. Intervention classes are an additional 40 minutes per day, where students are grouped by proficiency level and assisted by reading and writing specialists.

5. Data utilized: AIMS; Terra Nova; DIBELS; SELP; Gallileo; Writing Samples; end of theme assessments; student assessment binders.

6. Technology in classrooms is minimal; students visit the computer lab once a week, perhaps twice a week. It is very difficult for ELL students to utilize the Gallileo assessment piece on the computer, so the

school has returned to paper/pencil assessment with Gallileo.

7. Intervention support services is the "push-in" program, where students remain in classrooms and all specialists and elective teachers are brought into classrooms to assist students who are grouped by proficiency and receive small group instruction. Very basic ELL students receive an additional 40 minutes per day to address "basic phonemic awareness and language acquisition skills." There is a reading coach and reading specialist to assist teachers.

8. Tutoring is scheduled for before, after and summer school.

9. Parent involvement includes "Parent Power" which is monthly meeting where grade levels present information in an activity format to show parents what students are learning. A family night with access to the computer lab is available and an Adult Education teacher is available for translation services.

10. Professional development has included SEI and Reading 1st training.

11. Student success is attributed to team work between administration, teachers, students and parents. Also, consistency in all grade levels and student expectations, teachers analyzing data and the intervention services available to students.

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Lincoln Elementary School
Ranking: #7 ELL#: 408 %Passed in '05: 71.07

2. Average classroom population: 21

3. Paraprofessionals: None.

4. Curriculum: Houghton-Mifflin >
Reading/Spelling/Vocabulary
Saxon > Math
SRA - (Real) > Science
(additional) Blast-off > Reading/Writing/Math
(AIMS support)
Scholastic > Leveled readers
Phonics Library > Phonemic awareness
Writing Traits Kit > Writing

5. Data utilized: AIMS; Terra Nova; DIBELS; SELP; Gallileo; Houghton-Mifflin benchmarks.

6. Technology within classrooms is very minimal.

7. Intervention and support services are conducted during the day, with students being grouped according to proficiency levels and students with poor language skills receiving instruction in small group settings.

8. Tutoring services are after school and summer school. This is a Reading 1st and Title I school.

9. Parent involvement includes a monthly parent night, homework folders that student show parents

student work on a daily basis, open house, parent-teacher conferences and an open door policy.

10. Professional development: SEI, SIOP, SDAIE, 6 Trait Writing, Curriculum mapping, Technology Across the Curriculum training.

11. Student success is attributed to parent involvement, student planners that keep parents informed, teamwork and professional development.

Challenger Elementary School
Ranking: #8 ELL#: 720 %Passed on '05: 69.16

2. Average classroom population: 21 approximately
ELL: 75%

3. Paraprofessionals: None.

4. Curriculum: Houghton-Mifflin > Reading
Harcourt > Reading
Harcourt > Math
Saxon > Math

5. Data utilized: AIMS; Terra Nova; DIBELS; SELP; Gallileo.

6. Technology in classrooms consisted of approximately 2 computers within each classroom; the teachers did have the capability to hook their pc to the television within the class.

7. Intervention consists of 40 minutes per day, where students are grouped by proficiency levels.

8. Tutoring services are after school and summer school.

9. Parent involvement includes open house and parent-teacher conferences with translators available.

10. Professional development: Project Success; SEI; Spaulding; Reading 1st; AIMS Support; Curriculum mapping; SDAIE; 6 Trait Writing; SIOP.

11. Success was attributed to parent involvement, teacher and student motivation and teacher expectations.

A.J. Mitchell Elementary School
Ranking: MI ELL#: 692 %Passed in '05: 59.68

2. Average classroom population: 24

3. Paraprofessionals: None.

4. Curriculum:
Harcourt > Reading
Harcourt > Math
Saxon > Math
SRA (Real) > Science
Time/Scholastic > Social Studies

(additional)
Scholastic > Leveled readers
Into English > ESL readers
ELL Resource Kit > ESL
LeapFrog materials > ESL

5. Data utilized: AIMS; DIBELS; SELP; Terra Nova; Gallileo; district benchmarks.

6. Technology was minimal within classrooms; however, there are 2 computer labs available to students.

7. Intervention and support consisted of phonics instruction and grouping students for reading by proficiency level on a daily basis. Intervention services are in addition to the regular language classes for students. Students are also able to attend tutoring services twice a week, if their scores are low. SELP and DIBELS scores are analyzed for intervention placement and services.

8. Tutoring services are provided after school and summer school.

9. Parent involvement includes Adult Education English classes, parent technology classes, and after school homework club is available at the De Anza Rec Center.

10. Professional development: Technology instruction, Powerschool training, SEI, SIOP, SDAIE, 6 Trait Writing, Reading 1st, Curriculum Mapping, Gallileo training on a weekly basis, DIBELS benchmark training.

11. Student success is attributed to teaching to standards, school-wide intervention with small class size groupings, Reading 1st, parent involvement, SEI training and positive self-esteem.

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Marv L. Welty Elementary School
Ranking: 152 ELL#: 371

2. Average classroom population: 27

3. Paraprofessionals: None.

4. Curriculum: Voyager > Reading
Saxon > Math
SRA (Real) > Science
Houghton-Mifflin > Science

(additional) Advanced Reader > Model 05
Scholastic > Leveled readers
DRA > Reading

5. Data utilized: AIMS; Terra Nova; DIBELS; SELP; district assessments; Gallileo.

6. Technology was limited to a couple of computers within the classrooms.

7. Reading intervention was school-wide with students being grouped by proficiency levels; much smaller class sizes during this time.

8. Tutoring is after school, summer school and Title I.

9. Parent involvement includes parent-teacher conferences, open house, family computer night, and parenting skill classes.

10. Professional development: SEI; SDAIE; SIOP; 6 Trait Writing; Reading 1st; Voyager training; Gallileo training; Technology training.

11. Student success is attributed to parent involvement, Reading 1st, SEI support.

Desert Shadows Middle School
Ranking: 165 ELL#: 1209 %Passed on '05: 49.87

2. Average classroom population: 31

3. Paraprofessionals: None

4. Curriculum: Holt Elements of Language > Language
Holt Elements of Literature > Reading
Saxon > Math
Our World Today > Social Studies
(supplemental) AIMS Reading Skill Builder High Point > ELL

The staff has developed intervention guidebooks for each grade level and subject level. These guidebooks focus on the academic content standards, with a list of resource materials available for instructional support and intervention.

5. Data utilized: Gallileo; AIMS; NWEA.

6. Technology consists of a computer lab available for student use; teachers have computer which they utilize for Gallileo.

7. Interventions include AIMS Skill-building class, 6th grade Study Skills class, a Study Skills class for reading, Home Room has themes for each quarter such as test taking skills for 95 minutes every other day and a supplemental reading support daily.

8. Tutoring is available three times a week after school.

9. Parental involvement includes a Senate committee consisting of parents, teachers and students, parent liaison, parent newsletter and parent mailings involving grades and student progress.

10. Professional development: SEI; Gallileo; Reading; Technology; Powerschool; PowerGrades.

11. Student success was attributed to the Gallileo program where teachers analyze data which drives instruction.

Wade Carpenter Middle School
Ranking: #409 ELL#: 1176 %Passed in '05: 39.54

2. Average classroom population: 26

3. Paraprofessionals: None.

4. Curriculum: Holt Elements of Literature > Reading
Holt Elements of Language >

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Language
Saxon > Math
Holt > Science
Our World Today (Glencoe) >
Social Studies
**classroom sets of textbooks only

5. Data utilized: Gallileo; AIMS;

6. Technology is minimal.

7. Intervention consists of students being grouped by proficiency levels for reading. Additional classes for students who have not passed AIMS are required.

8. Tutoring is scheduled for 7th period, after and summer school; Princeton support services are available after school.

9. Parent involvement includes monthly literature and math nights and open house.

10. Professional development: SEI; Gallileo data analysis training; 6 Trait Writing.

11. Success is attributed to Saxon math, tutoring, vocabulary intervention and Sword to Success program.

Nogales High School
Ranking: #575 ELL#: 1371 %Passed in '05: 28.37

2. Average classroom population: 22

3. Paraprofessionals: None.

4. Curriculum: Holt Elements of Literature > Reading
Holt Elements of Language > English
(additional) Literature Analysis
Reading Strategies > all grades
AIMS Reading

5. Data utilized: AIMS; Terra Nova; Gallileo; district quarter assessments.

6. Technology includes several computer labs for student use; teachers have a computer in each classroom.

7. Intervention includes AIMS reading courses and basic reading strategy classes.

8. Tutoring is scheduled for after and summer school; mandatory for students with poor AIMS scores.

9. Parent involvement includes parent-teacher conferences, a parent liaison, and an AIMS meeting to inform parents what to expect and how to assist during AIMS assessment week.

10. Professional development: SEI; SIOP; Gallileo.

11. No comments were given regarding student success.

Santa Cruz Alternative High School
Ranking: #625 ELL#: 197 %Passed in '05: 8.62

2. Average classroom population: 20

3. Paraprofessionals: None.

4. Curriculum: Same as Nogales High with ancillary materials

5. Data utilized: AIMS; Writing assessments; Gallileo; Reading (Lexia).

6. Technology includes computers in all classrooms for students to use with Microsoft Office, Fast Track courses, Plato software, reading/writing/math programs and a 30 pc lab.

7. Intervention includes a internet on-line based program; with teachers analyzing data of student progress; U of A reading program.

8. Tutoring includes Saturday school, every day after school and summer school.

9. Parent involvement includes teacher communicating daily and weekly with all parents regarding student progress.

10. Professional development: SEI; Technology; Novel Stars; Data disaggregation.

11. Student success is attributed to manipulatives and interactive computer technology coursework.

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[EXHIBIT 221]

Schools shine brightly in latest testing results

With only a few exceptions, every grade in the Nogales Unified School District made noteworthy progress in every subject on the latest round of AIMS testing.

Supt. Dr. Guillermo Zamudio said that regardless of how the scores were compared, students improved in every single area except for third grade writing and tenth grade math. He attributed the gains to a variety of reasons, including having high expectations for all students, holding both employees and students accountable, creating. extended opportunities for learning, and making decisions based on an analysis of data.

"I want to thank everyone involved, including the school board for its vision and direction," Dr. Zamudio said, "We could not have gotten these results without the efforts of the principals, staff, and students working together."

What is especially gratifying is that students outscored state averages even when distinctions were made between fluent English-speaking students and English Learners. For example, the 31% of the English Learner students statewide passed reading at the third grade level while 63% of NUSD students passed. Only 13% of ELL students state-wide passed 10th grade writing while 25% of Nogales High School students did so.

There is an irony in the results, however. Despite the strong scores when compared to state averages, some schools may not have earned a label: as making Adequate Yearly Progress (AYP) because the students did not reach preset benchmarks even though they improved over the previous year. For example; the benchmark for ELL students in the 10th grade is 35%, but a survey of the scores from districts throughout the state showed that no school with a similar population to NUSD even came close to that mark.

In fact, when compared to other districts with high Hispanic populations, NUSD outscored those schools at almost every grade level and in all three subject areas of reading, writing, and math with only a few exceptions.

When the scorn of fluent English-speaking students were disaggregated, the results were even more dramatic. For example, at the third-grade level, only 75% of the students mastered the reading test while fully 90% of NUSD students did so. At the 10th grade level, 70% statewide passed writing while 82% of Nogales High School students did so.

In all this good news, there does remain a major concern, Dr. Zamudio said. That is the "achievement gap" between fluent English speakers and ELL students. For example, in NUSD fifth-graders, 85 percent of fluent English speakers passed the fifth-grade writing test while only 53% of ELL students did so. That wide a gap is "unacceptable," Dr. Zamudio said, and officials are working very diligently to provide ELL students with the extra help they need to catch up to their fluent peers.

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The problem becomes even more intense when Spanish-speaking students enter a district school at an upper grade level. If a student enrolls at Nogales High School as a freshmen with virtually no English skills, it is extremely challenging for him or her to pass the ADMS by graduation.

"We are very proud of how far we have come, but we are not resting. We know we have a long way still to go and challenges ahead," Dr. Zamudio said.

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[EXHIBIT 223]

• **(Failing Schools) State Tutoring Fund: Summary of Tutor Funds Paid from ARS § 15-241(0) and High School AIMS Tutoring Chart. Dated 10/17/06**

This chart shows that NUSD took advantage of funds only for 2004-05 ($8,875.00). NUSD never applied for funds except for this year.

• **AIMS Performance of Students Receiving Tuition in 2004-05 Report from ADE's Research & Evaluation (August 2005)**

This report reflects how over 6,000 students took advantage of the state tutoring program and that 88% of ELLs improved at least one performance level in at least one subject area.

• **2003-2004 AIMS Intervention/Dropout Prevention Grant Awardees List**

This list documents the five grantees for a total of $474,711. Nogales never submitted an application for funds.

• **2004-2005 AIMS Intervention/Dropout Prevention Awardees List**

This list documents the five grantees for a total of $474,711. Nogales never submitted an application for funds.

• **2005-2006 AIMS Intervention/Dropout Prevention Awardees List**

This list reflects the renewal of the 04-05 awardees, including two additional rounds of funding totaling $5,296,488, after the state received this increase for the fund. This also reflects that NUSD

never applied for either round of new funding during this time frame.

- **2006-2007 AIMS Intervention/Dropout Prevention Renewal Allocations**

This document reflects how the $5.2 million is being distributed for this current school year. Nogales did not apply for these funds once again in '06-'07.

Nogales Unified School District (NUSD) took advantage of part of the initial $10 million funding from the (Failing Schools) State Tutoring Fund in 2005 for juniors who failed one or more section of the AIMS. The overall results from that one year reflect that 88% of ELLs moved up at lease one performance level in at least one subject area. However, Nogales failed to continue to seek this funding after the Spring of 2005. The program covers the cost of tutors, in order to further assist high school students who failed one or more sections of the AIMS test. The State Tutoring Fund also provides free tutoring for any student in an underperforming/failing school. 2006 summer tutoring was included for those seniors who had not met the reading, writing and mathematics Standard in order to graduate with a diploma. In addition, an amendment to ARS § 15-241(Q) provides for resources to assist students in passing the AIMS test. Therefore, the AIMS High School Study Guides were funded out of the 2006-07 funds to support all high school students in preparing for the AIMS test, as well including Guides for all four grades (9-12).

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Nogales Unified School District (NUSD) failed to take advantage of the AIMS Intervention/Dropout Prevention (grant) program, reflective of ARS § 15-809. ADE manages this program and its 2003-2006 records illustrate no funding request from NUSD to assist high school students in meeting AIMS Standard(s) with a minimum of nine consecutive months of academic support, including tutoring and remediation; comprehensive instruction in the Arizona workplace skills; leadership and civic duty opportunities and the opportunity to provide twelve months of followup once a student graduates. Since the ADE has managed this grant, the program has increased and grown from approximately $515,000 (five grantees), to $5.2 million in 2006.

The "landscape" of funding has changed dramatically for Arizona's schools regarding increased funding and support to assist students in meeting the state's academic standards (AIMS) with tutoring, resources and technical assistance provided by the State. Both the (Failing Schools) State Tutoring Fund ($1.5 million each year and non-reverting) and the AIMS Intervention/Dropout Prevention Program (now $5.2 million) are new resources in place since 2000 that were not in place prior. The Flores vs. Arizona case contends that Nogales Unified needs funding for tutors and resources to fund teachers to work after school hours. Again, the aforementioned programs have been providing this funding through state resources.

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[EXHIBIT 225]

Since the Findings of Fact and Conclusions of Law, issued January 24, 2000, in the matter of Miriam Flores v. State of Arizona, et. al., there have been significant changes in the funding of English Language Learners in Arizona. Truly the landscape has changed so that certain assumptions made on January 24, 2000 are no longer valid.

Prior to Public Law 107-110, NCLB, English language learners were not identified as a special class. In many cases they were never tested and were allowed to languish behind their English speaking peers. With passage of the No Child Left behind Act, which reauthorized the Elementary and Secondary Education Act of 1965, English language learners have become one of the unique populations identified for tracking to ensure they attain academic performance at a level on par with their peers.

Specifically, Sec. 1001 of P. L. 107-110, The No Child Left Behind Act of 2001, contains the following language concerning the purpose of Title I funds:

2) *meeting the educational needs of low-achieving children in our Nation's highest-poverty schools,* ***limited English proficient children****, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance;*

In Plaintiffs Brief Regarding Sufficiency of House Bill 2064 filed March 24, 2006, on page 18, line 3, reference is made to the study provided by the National Conference of State Legislators. While the

study has significant flaws it provided the following guidance:

"In addition, schools receiving formula-based Title I funds must involve ELL students."

"Not only are ELL children and youth specifically referenced in numerous places throughout Title I: Part A and in Title I: Part C, but ELL children and youth tend to be from economically disadvantaged families and tend to be enrolled in schools that serve a high number of low-income families, which is addressed throughout Title I. As referenced above, Title I funding is extremely large. However, many people are not aware of the extent to which Title I can, and should, serve ELL students. These are funds that can be used to:

- Develop or purchase educational programs,
- Develop or purchase assessments,
- Purchase software and other technological aids,
- Provide professional development for all educational staff,
- Require high-quality, highly prepared teachers (particularly in Subpart A),
- Require high-quality, highly prepared educational aides (particularly in Subpart A),
- Provide educational programs for ELL students' extended families,
- Involve ELL students' extended families in the education of their children,
- Improve school libraries (particularly in Subpart B), and
- Improve statewide databases (particularly in Subpart A)."

It should be noted that Title III funds are specifically earmarked,

"to help ensure that children who are limited English proficient, including immigrant children and youth, attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet;"

In addition to changes in the law governing how ELL students are perceived there have been significant changes in the funds available for all students including ELL Students both at the State and federal levels.

Using information provided by the Joint Legislative Budget Committee on their WEB site at http://www.azleg.gov/jlbc.htm, since the 2000 fiscal year K-12 state, local and county equalization funding for maintenance and operations has increased from $3,431,059,000 to an estimated $4,849,063,800 in the 2006 fiscal year.

Equalization Funding of Maintenance and Operations

FY 2000	$3,431,059,000
FY 2001	$3,583,655,400
FY 2002	$3,803,484,200
FY 2003	$4,060,362,800
FY 2004	$4,275,562,028
FY 2005	$4,553,343,200
FY 2006	$4,849,063,800

Based on the numbers provided above, the funding for maintenance and operations, on a per student basis, has increased from $4,084 in the 2000

fiscal year to $4,837 in the 2006 fiscal year as shown by the table below.

Per Pupil Funding of Maintenance and Operations

FY 2000	$4,084
FY 2001	$4,216
FY 2002	$4,327
FY 2003	$4,480
FY 2004	$4,579
FY 2005	$4,689
FY 2006	$4,837

In addition to the significant increases school districts have received in their equalization funding from 2000 to 2006, school districts have received significant additional funding from two other discreet sources. First, additional funds for capital improvements have come from the School Facilities Board, as a result of the Students First legislation. The tables below identifies these funds. While these funds are not earmarked exclusively for ELL students, they provide benefits for those students.

School Facilities Board

FY 2000	$317,500,000
FY 2001	$992,725,300
FY 2002	$172,815,300
FY 2003	$753,274,100
FY 2004	$497,100,000
FY 2005	$424,000,000
FY 2006	$340,000,000

Second, Proposition 301, passed by Arizona voters in November 2000, provided significant increases in funds to school districts. A.R.S. § 15-977 requires that school districts allocate forty per cent of

the monies for teacher compensation increases based on performance and employment related expenses, twenty per cent of the monies for teacher base salary increases and employment related expenses and forty per cent of the monies for maintenance and operation. The table below summarizes these funds.

Proposition 301 Funds	
FY 2002	$235,346,200
FY2003	$341,796,000
FY2004	$330,375,200
FY2005	$379,639,700
FY2006	$494,572,500

In addition to changes in the equalization formula used to fund schools, the State of Arizona appropriated funds specifically designated for ELL students as a result of HB 2010. These funds are summarized in the table below.

PURPOSE	
FY 2002	N/A
FY 2003	N/A
FY 2004	N/A
FY 2005	N/A

PURPOSE
Cost study of Group B ELL weight

FY 2002	N/A
FY 2003	$500,000
FY 2004	N/A
FY 2005	N/A

PURPOSE **Teacher Training**	
FY 2002	N/A
FY 2003	$4,500,000
FY 2004	$4,500,000
FY 2005	$4,500,000

PURPOSE **Compensatory instruction for ELL pupils**	
FY 2002	$3,080,000
FY 2003	$5,500,000
FY 2004	$5,500,000
FY 2005	$5,500,000

PURPOSE **Instructional materials and supplies**	
FY 2002	N/A
FY 2003	$1,500,00
FY 2004	$1,500,00
FY 2005	$1,500,00

PURPOSE **Monitoring**	
FY 2002	$158,050
FY 2003	$316,095
FY 2004	$316,095
FY 2005	$316,095

PURPOSE **English learner classroom personnel bonus fund**	
FY 2002	N/A
FY 2003	$3,060,000

FY 2004	$3,060,000
FY 2005	$3,060,000

PURPOSE **Pilot program**	
FY 2002	N/A
FY 2003	$750,000
FY 2004	$750,000
FY 2005	$750,000

PURPOSE **Total**	
FY 2002	$3,238,050.00
FY 2003	$14,627,595.00
FY 2004	$14,127,595.00
FY 2005	$14,127,595.00

While HB2010 has expired the State of Arizona has recently enacted HB2064. This law which takes effect in the 2007 fiscal year provides a significant increase in funding for ELL. Specifically, HB 2064

provides the following appropriations in the current fiscal year:

• Appropriates $10,000,000 in FY 2006-07 from the state General Fund to the ADE for the Statewide Compensatory Instruction Fund.

• Appropriates $2,555,000 in FY 2005-06 and $4,610,000 in FY 2006-07 from the state General Fund to the ADE for statutory duties and *for the costs of providing English language proficiency assessments, scoring and ancillary materials to school districts and charter schools.*

• Appropriates $14,300,000 in FY 2006-07 from the state General Fund to the ADE for distribution to school districts and charter schools for the increased Group B ELL weight.

In addition to the changes in the law, and the significant increases in state funding made available to school districts in Arizona, other resources have also increased dramatically. In Arizona, the Title I program has increased from approximately $120 million in the fiscal year ending June 20, 2000 to $260,348,295 million in the current fiscal year ending June 30, 2007. In addition funding for other programs has also increased dramatically. Overall funding in Arizona, for programs offered under the NCLB act has increased to more than $582,931,537 in fiscal 2007.

The chart attached to this report as exhibit B provides a breakdown of federal funds provided to the State by the Elementary and Secondary Education Act of 1965 between the years of 2002 and 2007 inclusive.

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In addition to Title III which is specifically identified to provide services to ELL students, Titles I and II specifically identify ELL students and their teachers as components of the services these Titles support.

In a state such as Arizona where the number of English language learners in some of our largest Title I schools approach and exceed 25% of the population, it is not unreasonable to expect that a significant portion of those English language learner students would require academic assistance and that those schools would include the needs of those students in their consolidated plans required under P. L. 107-110, The No Child Left Behind Act of 2001.

Correspondingly, in a district like Nogales where close to 50% of the students are English language learners, it would not be inappropriate to use a large portion of the NCLB funds to provide strategies that benefit those ELL students.

During same period that Arizona's Title I funds have increased, the Title I allocation for the Nogales Unified School District has increased from $1,849,858 to $2,953,814. Since the fiscal year ending June 30, 2002, NUSD, has carried over at least $250,000, in unused Title I funds each year. For the most recent completed fiscal year ending June 30. 2006, NUSD, has an estimated $525,000, in unused Title I funds. Additionally, current completion reports indicate that NUSD will be carrying over approximately $59,667 in unused Title II Funds and $143,465 in unused Title III funds.

Nogales Unified School District has significant latitude in how it uses the funds made available to it.

NUSD could set aside funds to assist ELLs in a district wide program and allocate Title I funds to each school site for its schoolwide program in accordance with Title I regulations. The decision as to how their Title I funds are used rest with NUSD. In an LEA, like NUSD, with an ELL population approaching 50% of the population it would not be unreasonable to assume their needs would be considered in developing their schoolwide programs.

During the same period NUSD funding under Title III of NCLB has increased from $261,818 in 2003 to an estimated $322,900 in 2007. At the same time the number of ELL students reported by NUSD has decrease from 3923 in 2003 to 2474 in 2007. Accordingly per pupil funding, for Title III, has increased from $67 in 2003 to $121 in 2007. At the same time NUSD funding under the Title I program has gone from $1,644,029 in 2000 to $2,958,814 in 2007. At the same time the ADM of NUSD has decreased from 5989 to 5865. Accordingly per pupil funding for Title I, ignoring carryover of unused funds, has increased from $439 in 2000 to $597 in 2007.

In addition to increases in federal programs and competitive state programs NUSD has experienced significant growth in its equalization formula funding. In the Findings of Fact and Conclusions of Law, issued January 24, 2000, under findings of fact number 19, it was stated that NUSD did not have an override. In fact NUSD has now had an override in place beginning with the 2001 year. The table below shows the amount of the override by fiscal year.

NUSD M&O OVERRIDE

FY 2001	$895,891
FY 2002	$934,373
FY 2003	$947,901
FY 2004	$967,388
FY 2005	$974,800
FY 2006	$1,554,265
FY 2007	$1,674,407

The funds obtained from the M&O override are available for almost any educational purpose which NUSD chooses to apply them to. In addition to receiving additional funds from the override NUSD has received other significant increases in their M&O budget since 2000.

As can be seen from the chart below the M&O budget of NUSD has increased over each of the last eight years while the numbers of students attending NUSD has decreased.

2000	
NUSD M&O BUDGET	$22,195,385
NUSD ADM	6040
AVAILABLE PER PUPIL	$3,675

2001	
NUSD M&O BUDGET	$23,844,487
NUSD ADM	6112

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AVAILABLE PER PUPIL	$3,901

2002	
NUSD M&O BUDGET	$24,483,005
NUSD ADM	5935
AVAILABLE PER PUPIL	$4,125

2003	
NUSD M&O BUDGET	$24,704,091
NUSD ADM	5932
AVAILABLE PER PUPIL	$4,165

2004	
NUSD M&O BUDGET	$25,441,166
NUSD ADM	5811
AVAILABLE PER PUPIL	$4,378

2005	
NUSD M&O BUDGET	$25,440,108

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NUSD ADM	5806
AVAILABLE PER PUPIL	$4,382

2006	
NUSD M&O BUDGET	$27,006,213
NUSD ADM	5865
AVAILABLE PER PUPIL	$4,605

2007	
NUSD M&O BUDGET	$28,956,359
NUSD ADM	5865
AVAILABLE PER PUPIL	$4,937

The increase in NUSD's M&O budget between 2000 and 2007 is approximately $1,262, or an increase of approximately 34%.

Nogales Unified School District has received significant additional increases in M&O dollars from the classroom site funds made available as a result of Proposition 301. While 60% of the funds are earmarked for salary and benefit increases, 40% of these funds can be used in accordance with A.R.S. § 15-977(H) which includes class size reduction, aims intervention and dropout prevention all issues

affecting ELL students. These dollars are outlined in the table below:

Class Site Funds Per Prop 301	
FY 2002	$1,901,845
FY 2003	$1,703,092
FY 2004	$1,638,480
FY 2005	$1,681,501
FY 2006	$2,452,441
FY 2007	$2,337,050

Nogales like other school districts is also the recipient of other federal, state and local funds that benefit ELL students. For example in 2006, NUSD received $254,853 from the instructional improvement fund. These funds can be used for purposes identified in A.R.S. § 15-979 (D0 & (E) which specify that up to 50% of the funds are to be used for salaries and benefits and the remainder shall be used for 1) dropout prevention programs, and 2) instructional improvement programs including programs to develop minimum reading skills for students by the end of third grade. Both of these programs could benefit ELL students.

Attached to this document as exhibit C is a schedule of all of the grants received by Nogales Unified School District from the Arizona Department of Education for the 2006 fiscal year. The schedule reflects Total Program budgets of $8,916,793 which includes local carryover of $286,532. *Local carryover* reflects funds from a prior year that were paid out to NUSD but not used by them and subsequently were carried forward into the current year. The third column reflects the amounts that were paid out to NUSD in the 2006 fiscal year. The fourth column

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Remaining funds are those funds NUSD has not used and which will be carried forward into the next fiscal year. These funds total $1,366,870.

In addition to all of the funds made available through the Arizona Department of Education, NUSD receives significant funds from the School Facilities Board. The chart below shows how much has been received by NUSD:

2001	
Deficiencies Correction	$558,472
Building Renewal	$1,108,661
Totals	$1,667,133

2002	
Deficiencies Correction	$8,198,471
Building Renewal	$444,437
Totals	$8,642,908

2003	
Deficiencies Correction	$6,916,952
Building Renewal	$1,277,380
Totals	$8,194,332

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2004	
Deficiencies Correction	$902,976
Building Renewal	-$23,307
Totals	$879,669

2005	
Deficiencies Correction	$27,041
Building Renewal	$729,749
Totals	$756,790

2006	
Deficiencies Correction	$28,455
Building Renewal	$649,270
Totals	$677,725

Total	
Deficiencies Correction	$16,632,367
Building Renewal	$4,186,190

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Totals	$20,818,557

This table reflects the fact that since 2001, NUSD has received $20,818,557 in funds designed to improve their facilities. The deficiency correction funds were designed specifically to bring NUSD up to the minimum space requirements for the number of students attending their schools.

In conclusion I can offer the following information. Assuming NUSD spends a proportionate amount of federal and state funds for ELL students, and assuming the full provisions of HB 2064 are allowed to take effect, I estimate the per pupil funding available in 2007 for ELL students attending NUSD schools, exclusive of Basic State Aid, to be $1,432, per ELL student. This amount compares with $711 per ELL student available from these same funds in FY 2000, or an increase of $721 or more than 100%

Additionally, NUSD has significant latitude in using the increasing myriad of state funds it has received to benefit students who are academically in need. The effect of these significant increases in federal and state funding is somewhat evidenced by the fact that NUSD has had significant carryovers of Title I, Title II and Title III funds since the advent of No Child Left Behind. In addition to the federal monies and group B weight increase available to it, NUSD has received increases in the amount of base level funding to which they are entitled. A review of the chart entitled "PER STUDENT FUNDING FOR ELL INCLUDING BASE LEVEL AMOUNT &

TEACHER EXPERIENCE ONLY" shows that the base level funds for ELL students has increased from $2,592 in 2000 to $3,173 in 2007. This is an increase of $581 or 22%.

When all of these factors are considered I can safely affirm that NUSD has the resources required to adequately fund their ELL programs. The issue is not one of sufficient resources but rather a question of how those resources are allocated.

* * *

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[EXHIBIT 236]

Fiscal Year	1998
Name	Nogales Unified District
Total Salary	$7,526,802.00
Total FTE	258.2
Average Salary	$29,151.05

Fiscal Year	1999
Name	Nogales Unified District
Total Salary	$9,266,278.00
Total FTE	287.5
Average Salary	$32,230.53

Fiscal Year	2000
Name	Nogales Unified District
Total Salary	$8,453,272.00
Total FTE	272.2
Average Salary	$31,055.37

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Fiscal Year	2001
Name	Nogales Unified District
Total Salary	$9,213,762.00
Total FTE	296
Average Salary	$31,127.57

Fiscal Year	2002
Name	Nogales Unified District
Total Salary	$10,536,368.00
Total FTE	329
Average Salary	$32,025.43

Fiscal Year	2003
Name	Nogales Unified District
Total Salary	$10,892,434.00
Total FTE	317
Average Salary	$34,360.99

Fiscal Year	2004

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Name	Nogales Unified District
Total Salary	$11,235,276.00
Total FTE	321.5
Average Salary	$34,946.43

Fiscal Year	2005
Name	Nogales Unified District
Total Salary	$11,947,219.00
Total FTE	329.5
Average Salary	$36,258.53

Fiscal Year	2006
Name	Nogales Unified District
Total Salary	$13,606,068.00
Total FTE	331
Average Salary	$41,105.95

* Omitted Columns Entitled OwnerID, CTDS and Classification ID From Table

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[EXHIBIT 238]

Irene Moreno

Position:
Deputy Associate Superintendent, Office of English Acquisition Services The Arizona Department of Education

Dates:
April 2003 to Present

Activities:
Under my guidance, the activities of the Office of English Acquisition Services have expanded as follows:

1. **The design, development and implementation of the Arizona English Language Proficiency Standards (ELPS).**

a. <u>These did not exist prior to 2003.</u>

b. This means that there was no central core of instruction to enable teachers to develop a uniform curriculum when the previous four assessments were administered.

• SELP was the first English proficiency assessment explicitly designed and linked to proficiency standards for ELL instruction.

• With these proficiency standards, for the first time, educators could develop a viable, consistent and workable curriculum for ELLs and English acquisition that is correlated to the Arizona Academic Standards. Teachers could now teach to the standards, which again, did not exist prior to this

time. Even though there were different mechanisms for assessment, the introduction of the ELPS brought new dimension and critically-needed resources to the teaching of ELLs. Critically, these standards are also correlated to the Arizona Academic Standards.

c. From the beginning of this project in May of 2003, to final adoption by the Arizona State Board of Education (SBOE) on January 26, 2004, this process revolved around stakeholder participation and incorporated statewide input, as can be seen from the outreach towards communities across Arizona.

d. EAS has produced and disseminated bound copies statewide, provides them at every conference, provides technical training sessions and has incorporated their use into the EAS monitoring process: Teachers are interviewed regarding their integration of the standards into their lesson planning and instruction. (Please note Question 14 Response below)

e. These standards are one of the mandatory rubric items in educator training required to obtain the Structured English Immersion (SEI) Endorsement, which is also outlined in point 3 of this response.

2. **The design, development and implementation of the Structured English Immersion (SEI) Endorsement**

a. This did not exist prior to 2004.

b. The Provisional SEI Endorsement, which requires 15 clock hours of professional development or one semester hour, must be obtained by August 31, 2006.

• The Provisional SEI Endorsement is valid for 3 years and is not renewable R7-2-613, (J), (2). Those classroom teachers, supervisors, principals, and superintendents holding a full English as a Second Language (ESL) Endorsement or a full Bilingual Endorsement do not need to obtain the Provisional SEI Endorsement.

c. The Full SEI Endorsement requires an additional 45 clock hours of professional development or three semester hours, for a total of 60 clock hours of professional development or four (4) semester hours

• The Full SEI Endorsement shall be completed by August 31, 2009, and the Full SEI Endorsement shall be added at the time of renewal. At the time of renewal, a person lacking the requirements for the Full SEI Endorsement shall be denied renewal.

d. In this process, EAS and the Structured English Immersion (SEI) Task Force members developed the SEI 15 and 45 Clock Hour provisions of the SEI Endorsement. The task force's makeup reflected statewide outreach, as well as members from the K-12 and postsecondary educational communities.

e. The United States District Court ruled in favor of the Arizona State Board of Education on a challenge regarding the SEI Endorsement rules.

f. An SEI curricular framework for training was designed and developed by the aforementioned Task Force. The SBOE approved the SEI Task Force-recommended curricular framework for both the Provisional SEI Endorsement and the Full SEI Endorsement on January 24, 2005. In addition, the

SEI Endorsement fund its necessary component, the ELPS) are now part of the Teacher Preparatory Programs at all Arizona Institutes of Higher Learning.

g. A statewide SEI Reimbursement Fund was established to provide $13,500,000 for educators to receive SEI endorsement training. This fund provides all districts and charter schools money, up to a maximum of $115.00 per educator, to train all certified personnel.

3. **The design and development of the Structured English Immersion (SEI) Models:**

a. These did not exist prior to 2003.

b. In order to provide guidance to educators and practical examples/advice to help them in development of a district's SEI program, the design and development of the SEI Program Models was undertaken. This process was overseen by EAS in partnership with the SEI Advisory Council. *See* **Exhibit # 37, *SEI Advisory Council***

c. The educational literature that was used to assist with the creation of the SEI program models is The ABC's of English Immersion: A Teacher's Guide. This publication comes from the Center for Equal Opportunity in Sterling, Virginia. The SEI program model document was then mailed to all LEAs for additional comment/input as well as being shared at the monthly PELL meeting. EAS also canvassed stakeholder input from across the state in order to review and revise the SEI program models, if necessary.

d. These models are programmatic guidance (as opposed to a mandate) and are based on ARS §15-

751 to 15-755 (Article 3.1) which explains what structured English immersion instruction entails. The SEI models were finalized and broadcast within the state of Arizona on August 12, 2005 and subsequently placed on the ADE website.

e. The makeup of an ideal SEI classroom example (into which a student in the ELL program would be placed) is as follows:

• In the SEI classroom, students are grouped based on their proficiency level on the SELP.

• The ELL proficiency standards are used to guide instruction in the SEI classroom. Since the ELL proficiency standards are linked and aligned to the Arizona Academic Standards, this will ensure that students have access to the curriculum, therefore, attaining academic excellence.

• This program placement is not normally intended to exceed one year as students in the SEI classroom will receive intensive English Language Development through the content areas.

f. The makeup of an ideal mainstream classroom example (into which a reclassified/FEP student would be placed) is as follows:

• Students are placed with native English speakers and other fluent English proficient speakers.

• The Arizona Academic Standards are used to guide instruction (and the ELPS may also be incorporated into lessons).

• Teachers in mainstream classrooms continue to utilize SEI strategies in order to make the curriculum comprehensible.

• This allows for continued English Language Acquisition through the content areas.

4. **The development and the collaboration of the Arizona Department of Education (ADE) in two Structured English Immersion (SEI) Training Partnerships provide statewide SEI educator training.** The partners are The Arizona School Services through Educational Technology (ASSET) and the Arizona K-12 Center (AzK-12). The ASSET partnership offers educators online individual SEI Endorsement training. The AzK-12 partnership offers a "train-the-trainer" system in which district teams receive online and face-to-face SEI Endorsement training. Both systems lead to the official SEI certification for participants.

a. These collaborative ventures and concentrated outreach did not exist before 2005.

b. Providers of SEI training must ensure that their curricular framework and training comply with all aspects of a rubric, also developed by EAS and the SEI Task Force.

c. With both the ASSET and AzK-12 training systems, the educators and educator-teams are from every corner of the state. They are from diverse districts/schools, from locations in major urban centers and rural settings, and are themselves from diverse demographic backgrounds, and these educators will reach diverse student populations with research-based strategies/data-assessment guided instruction.

d. Both partnerships have developed a consultation relationship to develop their curriculum, with Dr. Jana Echevarria, who has also

been a long-time speaker at EAS conferences and is a State Board of Education-approved SEI trainer. She has written numerous journal articles and book chapters, has written and produced two videotapes and has co-authored two books, *Sheltered Content Instruction: Teaching Students with Diverse Abilities*, and *Making Content Comprehensible for English Language Learners: The SIOP Model (see below noted exhibit)*, both published by Allyn & Bacon. Dr. Echevarria is currently a Principal Investigator with OERI's Center for Research on Excellence, Education and Diversity (CREDE) where she is conducting a five year study on the Effects of Sheltered Instruction on the Achievement of Limited English Proficient Students.

e. These partnerships with both ASSET and the Arizona K-12 Center offer a linkage between higher education and ADE to develop and provide training to benefit educators across the state. The development of both plans required reflective thinking in the identification of need, the scope of work, the development of training modules and the delivery systems. Both required a long time in analyzing the potentialities and challenges. By using combined resources, these partnerships have a statewide effect that is much greater than the sum of its parts. Both partnerships are ground-breaking. This is statewide-outreach into educator credentialing and right into the classroom.

• The Arizona K-12 Center (AzK-12) is the professional development arm of Northern Arizona University, located in Phoenix, Arizona.

• The Arizona state Legislature approved and funded the Arizona K-12 Center to begin in July 1999. In its first year, the Center expanded through a collaborative effort among Arizona's universities and other state and national learning institutions. Now in its fourth year, AzK-12 continues to bring innovative ideas and professional development support to Arizona educators.

• Az-K12 has developed a statewide train-the-trainer model (5-member teams) that supports LEAs in training district teachers and administrators in SEI. The past training has covered the Provisional 15-Clock Hour SEI Endorsement. The current and projected train-the-trainer modules will cover the remaining 45-Clock Hour requirement for the SEI Endorsement. As of this date, 300 educators (60 teams) from across Arizona have already received training.

• ASSET is the online professional development arm of Arizona State University, located in Tempe, Arizona. ASSET has helped Arizona K-12 educators integrate technology into their classrooms since 1983. ASSET is a self-supported department of KAET Public Television located at Arizona State University. This organization is supported by a school membership structure, as well as grants, and corporate donations. ASSET takes great pride in collaborating with business and non-profit organizations to bring the best possible resources to Arizona educators.

• ASSET has developed online SEI training for individuals. As of this date, this training has reached over 1,500 educators from across Arizona. Current

and projected training will cover the remaining 45-Clock Hour requirement for the SEI Endorsement.

5. **NCLB requirements regarding accountability and English Language Learner (ELL) instruction, and data reporting.** The NCLB Annual Measurable Achievement Objective (AMAO) requiring reporting of, "...annual increases in the number or percentage of children attaining English proficiency by the end of each school year as determined by a valid and reliable assessment of English proficiency..." has also had a positive impact upon the reporting of reclassified students by LEAs. Due to NCLB requirements, data and the processes for acquiring the same needed to be precise, accurate and quantifiable. This was not the case due to a number of factors:

a. Prior to 2003 and the development of the Arizona state English Language Proficiency Standards, Local Educational Agencies (LEAs) used multiple and inconsistent performance indicators from the assessment instruments to measure student progress in English. A common set of standards, benchmarks, and performance indicators for the state's schools did not exist.

b. Prior to 2003, ADE attempted to correlate results to meet the required reporting guidelines for NCLB, using LEAs' self-reported data. This was a daunting task, considering that the LEAs had the option to use any of the four State Board of Education-approved assessment instruments.

c. Prior to 2003, there was no one state system for districts to use in reporting data. This was

changed with the establishment, by law, of the Student Accountability Information System (SAIS).

d. The following delineates the parameters of the Student Accountability Information System under Arizona Revised Statutes, Title 15.

15-1041. Student accountability information system.

The student accountability information system is established to enable school districts and charter schools. to transmit student level data and school finance data electronically through the internet to the department of education for the purposes of complying with the statutory obligations of the department of education and the state board of education.

e. With the adoption of the Stanford English Language Proficiency (SELP) Assessment and the implementation of the SAIS, the state of Arizona now is able to comply with federal requirements and provide consistent, clean, coherent data that reflects a true picture of LEAs' ELL programs and reclassified students.

f. ADE also designed, developed and has posted in the English Acquisition Services (EAS) web page a manual to assist districts in the understanding of AMAOs. The manual provides step-by-step instruction in what AMAOs are, how the ADE calculates a district's ranking based on district-generated data, how districts can appeal findings and other items of technical assistance.

6. **The development and implementation of the Practitioners of English Language Learners (PELL) monthly meetings.**

a. These did not exist prior to 2004.

b. This organization and these meetings were developed and implemented by EAS to ensure an unbroken line of communication and offer technical assistance to ELL coordinators across Arizona. Subject matters range from data input into the Arizona Student Accountability Information System (SAIS), school finance funding cycles to SELP.

7. The design, development and implementation of the annual Arizona Department of Education (ADE) Structured English Immersion (SEI) Seminars:

a These did not exist prior to 2003.

b. These were designed and implemented by ADE to be vehicles for ELL educator professional development that encompass presentations by nationally-recognized experts, research-based teaching strategies, data, EAS-provided technical assistance information sessions and materials/resources for ELL instruction.

c. The first event, "The SEI Super Seminar." was held on May 31, 2003, the second event, "English Immersion Strategies for the Education Professional," was held on May 19-20, 2004 and the third event, "Standards, Strategies, Assessment: Improving Academic Achievement," was held on May 25-27, 2005.

• At this last noted event, attendance at certain specifically-listed sessions adhered to the SEI curriculum and could be part of the actual total clock hours necessary to acquire an Provisional SEI endorsement.

d. The fourth event, "Standards, Strategies, Assessment: Improving Academic Achievement-Part II," was held August 31, September 1-2, 2005; this meant two conferences were held in 2005.

• This event's total design (17 hours in total) provided actual clock hours necessary to acquire an SEI endorsement.

e. Following are excerpts from large program files for the events. The exhibits are of the excerpted 'conference-at-a-glance' files that were inserted into the program.

f. Also, the two conferences for 2006 are:

• The upcoming "ELL Leadership Summit-2006" to be held May 16, 17, 2006 is designed for Arizona school district superintendents, assistant superintendents, principals, assistant principals and teacher leaders. It will focus on data acquisition and practical real-world data used to guide ELL instruction.

• The upcoming (Title TBD) to be held August 14-16,2006 event's total design (17 hours in length) is to provide actual clock hours necessary to acquire an SEI endorsement.

8. **The design, development and implementation of the EAS "Teacher of the Year" Award:**

a. This did not exist prior to 2005.

b. This award has been created to recognize excellent education in the challenging field of ELL instruction; EAS designed, developed and implemented the first annual "EAS-Teacher of the Year" honor. Educators have to complete a challenging application and acquire testimonials

attesting to their expertise. In a blind judging, based upon the rubric, a panel of the ADE Deputy Superintendent, independent consultants and current ELL practitioners select the award recipient. In 2005, 50 teachers statewide applied for this award.

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Appendix K

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 12, 2007 10:15 a.m.

[COOPER, T-4, 92:6-92:15]

Excerpt from Testimony of Kelt Cooper

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. . .

Q. Now, at the -- I guess toward the end of your testimony you talked about the role of leadership and management in a school district and that it doesn't do any good to pour money into a poorly managed school district with poor leadership; right?

A. Correct.

Q. You do agree, though, that money can make a difference with effective leadership and good management; right?

A. Yes, sir.

* * *

Appendix K

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 24, 2007 9:59 a.m.

[DUDO, T-7, 117:4-120:3]

Excerpt from Testimony of Eugene E. Dudo

* * *

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. . .

Q. Right. Now let's talk about where the district gets the money to do this. The district, like every other district in Arizona, receives state equalization aide; correct?

A. That's correct.

Q. And as part of that you get the group B weight that we've talked about for quite a while here?

A. Yes, that's correct.

Q. Is that sufficient to pay for this program?

A. No.

Q. That's the $365 per English language learner student?

A. That's correct.

Q. And we'll get in a moment to the financial figures for this program, but where does the district get the balance of the money it needs to fund this program?

A. Most of the money that the district uses to fund the program comes directly from our deseg funding, which is a local tax rate assessed on property within the district.

Q. And the -- let me -- let's make sure we're

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clear about this. The district is authorized under state law to assess a tax to pay for compliance OCR agreements; correct?

A. That's correct.

Q. Glendale, however, also has either an OCR agreement, or it's an OCR agreement I believe that has racial aspects as well; is that correct?

A. That's correct.

Q. Can you tell us about that a bit?

A. Well, it's similar where a complaint had been filed with the Office of Civil Rights, and based upon their review of our district they identified some areas that they wanted the district to change, and so we are allowed to budget those costs outside budget limit on that tax rate.

Q. Okay. That doesn't require a vote from property holders or voters within the district, does it?

A. No, it does not.

Q. That's just by a vote of the governing board; correct?

A. That is correct.

Q. And just give us a ballpark on this, but how much money does the district generate through this tax for its ELL programs?

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A. About 3 and a half million dollars, I believe, for -- that we associate with the ELL agreements.

Q. We'll get the specific in a second. And how much for the racial aspects?

A. Another 2 million.

Q. So for --

A. Two, 2 -- about 2, yeah, about 2 million.

Q. So the district generates over $5 million for compliance with OCR agreements?

A. Yes. Yeah.

Q. Through the local property tax base; correct?

A. That's correct.

Q. With no contribution from the state for those purposes; right?

A. That's been kind of an issue with deseg programs. Our program I don't think generates any state revenues. Some deseg programs may because of caps on tax rates that occur, but ours doesn't.

Q. What I was trying to get at was the state doesn't give you any equalization assistance or anything like that because of deseg monies that are produced by local taxpayers?

A. No, it doesn't.

Q. Okay. Now, how would you characterize the

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success of Glendale's programs for its ELL students?

A. I would say that our district program is

successful.

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[DUDO, T-7, 125:10-125:24]

Excerpt from Testimony of Eugene E. Dudo

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. . .

Q. Glendale's proud of its success in this area, I assume?

A. That's correct.

Q. Now, after this newspaper article -- well, before we leave it let's go to the last page for a second. You're quoted in the last -- very last column of that article. It says, "Other school districts cannot duplicate the story without an adequate funding base"?

A. Yes.

Q. And you made that statement; correct?

A. That is correct.

Q. I assume you believe it; right?

A. Yes, I do.

* * *

Appendix K

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 11, 2007 10:00 a.m.

[MORENO, T-3, 19:4-19:11]

Excerpt from Testimony of Irene Moreno

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p. 19

. . .

Q. Based on what you see here, is this a cause for concern as the head of that division?

A. Yes.

Q. Okay. Do you have any explanation as you're sitting there about why scores declined at every grade level that we have data for?

A. No. I mean, there's theories, but I don't have anything --

* * *

Appendix K

[MORENO, T-3, 30:5-30:22]

Excerpt from Testimony of Irene Moreno

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. . .

Q. Okay. So we've got -- since the judgment was issued in this case we've gone through three different ways of assessing the proficiency of English language learners; correct?

A. That is correct.

Q. Now, when the SELP test was introduced and started to begin to be used -- in '04-05?

A. Yes, sir.

Q. -- what was the impact on the classification rate of English language learners?

A. It increased.

Q. By how much? Do you know?

A. We have various data that has come in. There were a handful of districts, maybe more than a handful, that claimed there was a real spike, but as we had our research and evaluation person look at it, it did not concur with the districts and what they saw.

* * *

Appendix K

[MORENO, T-3, 72:4-72:25]

Excerpt from Testimony of Irene Moreno

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. . .

Q. And then for English language learners, we've got three different ways that we've been assessing those students over the last six years; right?

A. Yes.

Q. We've talked about them, I don't want to beat a dead horse here, but we've actually changed the way we determine how English language learners are proficient three different times over the last six years?

A. Okay, yes.

Q. Is that correct?

A. Yes.

Q. So just as a general matter, I mean, is it really possible to compare this year's data to last year's data to the previous year's data, going back all the way to, say, 2003 for English language learners? I mean, is it apples to apples? Do you understand my question?

A. I understand the question, and I agree it isn't apples to apples. You have to have a baseline using the same assessment to be able to see where actual growth is.

* * *

Appendix K

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, et al., Plaintiffs, vs. STATE OF ARIZONA; et al., Defendants.	Docket No. CV92-596 TUC-RCC Tucson, Arizona January 18, 2007 9:52 a.m.

[ZAMUDIO, T-6, 52:11-52:20]

Excerpt from Testimony of Guillermo V. Zamudio

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. . .

Q. And do you think that accounts in part for, for example, the rankings that Ms. Garcia-Dugan testified about? The Nogales High School was in the 500s I believe on that list. I assume that's not a result you're happy with?

A. Certainly that is not a result we're happy with, and we believe that because of that the high school -- and that's one of the factors that helps to identify why we're not doing as well. We obviously would want to be doing better.

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Appendix L

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MIRIAM FLORES, individually and as parent of Miriam Flores, a minor child, et al., Plaintiffs, v. STATE OF ARIZONA; et al., Defendants.	No. CIV 92-596-TUC-ACM **ORDER**

Pending before the Court is Plaintiffs' Third Motion for Injunctive Relief and Motion to Expedite filed December 13, 2004. The Court heard oral argument on January 24, 2005. After consideration, the Court will grant Plaintiffs' Motions.

FACTUAL AND PROCEDURAL BACKGROUND

On January 24, 2000, the Honorable Alfredo Marquez entered his ruling on this case when he found that Defendants violated the Equal Education Act of 1974 (EEOA) by failing to adequately fund instruction for children who are English language

learners (ELLs)[1]. Plaintiffs filed a Motion for Post-Judgment Relief on July 13, 2000 asking the Court to order

Defendants to complete a new cost study by November 1, 2000 which was granted on October 12, 2000. The Court's Order made it clear that the study was to be completed in a timely fashion so that the Arizona legislature could appropriate funding and take action during the next budget session beginning in January 2001. In November 2000, Arizona voters passed Proposition 203 which repealed the Arizona statutes prescribing the models for the delivery of language acquisition programs and established a new model based on sheltered English or structured English immersion. In response to Proposition 203, the parties entered into a stipulation on November 28, 2000 which provides that the State of Arizona will determine the training, background and qualifications necessary for teachers of ELL students and adopt appropriate rules. Further, the State agreed that the cost study that was to be prepared pursuant to the Court's October 12, 2000 Order would reflect the funding and resources necessary to train and develop teachers of ELL students under the Proposition.

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[1] Originally, these particular students were referred to as limited English proficient (LEP) and the program of instruction was referred to as "Lau programs" after the Supreme Court case, *Lau v. Nichols*, 414 U.S. 563 (1974).

The cost study was completed; however, the legislature did not consider funding the programs and Plaintiffs sought further post-judgment relief by filing a Motion for Injunctive Relief on May 22, 2001 asking the Court to set a deadline for the State to comply with the January 2000 Declaratory Judgment. The Court granted the Motion on June 11, 2001 ordering the State to comply by January 31, 2002. The state legislature enacted HB2010 on December 19, 2001 which provided an interim measure to satisfy the Court's Order to change the way ELL programs are funded. HB2010 provided funding of an additional $150 per ELL student raising the formula to approximately $339.91 per ELL student (based on the amount that the Nogales Unified School District was incurring as reported in the 2001 cost study). The bill also required the Legislative Council to award the contract for a new cost study to a private entity and this study was to be completed and submitted to the Joint Legislative Committee, the Governor, the President of the Senate and the Speaker of the House of Representatives on or before August 1, 2004. Further, the bill established the Joint Legislative Committee on School Maintenance and Operations Funding which consists of four members from the House of Representatives and four members from the State Senate. Among other things, the Committee was to evaluate and make specific recommendations on school district funding and ELL programs. On January 9, 2002, Plaintiff filed for an injunction challenging the legislation as not bearing a rational relationship to the actual funding actually needed to

implement language acquisition programs in Arizona. The Court granted that Motion on April 8, 2002, but reconsidered and vacated the Order on April 30, 2002. On June 12, 2002, the Court issued an Order finding that the State took appropriate action to address the directives in the case in part because the legislature recognized that the funding levels may require further adjustment once the new cost study was completed. Defendants filed the new cost study on October 11, 2002.

The cost study has not been completed, missing the August deadline set by HB2010. Also, the Joint Legislative Committee was set to automatically expire on December 31, 2004. Plaintiffs filed this Third Motion for Injunctive Relief on December 13, 2004 asking that the Court set a deadline for the State to comply with the January 2000 judgment.

LEGAL STANDARD

The granting or denying of injunctive relief rests within the sound discretion of the trial court. *See S.E.C. v. Goldfield Deep Mines Co. of Nevada*, 758 F.2d 459 (9th Cir. 1985); *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001 (9th Cir. 1985); and *G.C. and K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096 (9th Cir. 2003). "Courts have inherent power to enforce compliance with their lawful orders...." *Shillitani v. United States*, 384 U.S. 364, 370 (1966). "When a district court's order is necessary to remedy past discrimination, the court has an additional basis for the exercise of broad

equitable powers." *Spallone v. United States*, 493 U.S. 265, 276 (1990). These powers are not unlimited however and the court should use the "least possible power adequate to the end proposed." *Id.* The requirements for injunctive relief are 1) the likelihood of substantial and immediate irreparable injury, and 2) the inadequacy of remedies at law. *G.C and K.B. Investments, Inc.*, 326 F.3d at 1107. *See also LaDuke v, Nelson*, 762 F.2d 1318, 1330 (9th Cir. 1985). The scope of federal injunctive relief against a state government must always be narrowly tailored to enforce federal constitutional and statutory law only. *Clark v. Coye*, 60 F.3d 600, 603-604 (9th Cir. 1995). Thus, the injunction should protect the plaintiffs' federal constitutional and statutory rights but not require more of state officials than is necessary to assure their compliance with federal law. *Id.* at 604.

DISCUSSION AND ANALYSIS

Plaintiffs file this Motion because certain, sections of HB2010 expired on December 31, 2004 and they fear that the legislature will do nothing for ELL programs during this legislative session. Plaintiffs point out that the cost study that was supposed to be completed and submitted by August 1, 2004 has not been done; however, Defendants have supplemented the record with a letter that indicates it may be done by February 15, 2005. Plaintiffs argue that the absence of a final cost study and the end of the Joint Legislative Committee makes it a concern that the legislature will not act on its obligations to fund ELL

programs during this session and the Plaintiffs would have to wait another year for any relief. Plaintiffs ask the Court to establish a deadline for the legislature to comply with the Judgment already issued in this case.

Defendants counter that an injunction would be premature and the Court should defer its ruling on the Motion until the legislature has had an opportunity to act on its own. Defendants admit that the cost study has not been completed and that the Joint Committee has not submitted a report. However, Defendants contend that the work on the cost study continues and that Governor Napolitano had written to the President of the Senate and the Speaker of the House on December 6, 2004 urging them to reconstitute the Joint Committee. Defendants argue that the legislature is well aware of the problem and that the bill [HB2010] itself contemplated that a report by the Joint Committee would not be available for action by the Legislature until the 2005 session. Defendants ask that the Court give the new Legislature an opportunity to take further action on its own.

Plaintiffs reply that Defendants failed to provide any explanation for its delay and allege that they are in no hurry to comply with the Court's Order. Plaintiffs argue that the Governor's request that the Joint Committee be reconstituted has no legal effect and that the legislature can disregard it. In a letter to the Court dated January 21, 2005, the President of the Senate and the Speaker of the House stated that

they intended legislative review during this session. Further, the Joint Committee was automatically repealed at the end of December and it would take new legislation to reconstitute it. Plaintiffs argue that this is not the first time in the history of this case that the legislature has failed to discharge its responsibilities and that a Court order establishing a deadline to comply is the least restrictive remedy possible at this point.

The Court is mindful of the issues that have been perculating in this case for the past five years. Thus far, the legislature has failed to meet the Court's deadlines as well as their own. If the Court were to defer its ruling to see if the legislature acts on its own, it may jeopardize any opportunity for the ELL programs to be funded during this legislative session and the children will have to wait more than another year for any type of relief. Further, the Court finds no harm in setting a deadline to ensure that the legislature acts when it has already expressed an intent to do so. By ordering injunctive relief, the Court seeks to ensure that Plaintiffs receive the relief they were found to be entitled to more than five years ago while not putting any more requirements on the State than is absolutely necessary. For these reasons, the Court will grant Plaintiffs' Motion and order that the legislature comply with the Court's January 2000 Declaratory Judgment by the end of this legislative session.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Third Motion for Injunctive Relief is (Docket No. 284) **GRANTED**. Defendants have until the end of this legislative session or April 30, 2005 (whichever date is later) to comply with the Court's January 2000 Order by appropriately and constitutionally funding the state's ELL programs taking into account the Court's previous orders and the parties' stipulation.

IT IS ALSO ORDERED that Plaintiffs' Motion to Expedite (Docket No. 283) and Defendants' Motion to Supplement are **GRANTED**.

DATED this 24th day of January, 2005.

/s/ RANER C. COLLINS
RANER C. COLLINS
United States District Judge